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Charles Tilly (1929-2008)

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The Making of European Labour Mobility from a Socio-Historical Perspective – An Introduction

Sebastian M. Büttner, Karim Fertikh & Nikola Tietze *

Abstract: *»Die Entstehung der europäischen Arbeitskräftemobilität aus sozialgeschichtlicher Perspektive – eine Einführung«.* This article provides an overview on the historical development and the current state of the implementation of labour mobility in Europe. In light of the present challenges of labour mobility within the context of the European Union (EU), we propose to shift the focus away from a predominant emphasis on the history of European integration and current events in the European Union towards a broader socio-historical perspective. This socio-historical perspective shows that the legal concept of the "freedom of movement" is by no means confined to the EU and its predecessors. An examination of the struggles and obstacles encountered in the implementation of the principle of free movement can be useful for an exploration of both the fundamental dilemmas and obstacles as well as basic features and practices of European integration and transnational institution-building.

Keywords: Free movement, labour mobility, migration, history, European studies, Europeanisation, socio-historical approach, European integration.

1. The End of a European Dream? Contestations of Free Movement in Contemporary Europe[1]

Cross-border mobility is undoubtedly a pivotal component of European integration, with the principle of free movement of labour serving as a seminal

* Sebastian M. Büttner, Berlin-Brandenburgische Akademie der Wissenschaften (BBAW), Jägerstr. 22/23, 10117 Berlin, Germany; sebastian.buettner@bbaw.de; ORCID iD: 0000-0002-5444-5350.
Karim Fertikh, Sciences Po Strasbourg – Institut universitaire de France, 7, rue de l'Écarlate, F-67082 Strasbourg, France; karim.fertikh@unistra.fr; ORCID iD: 0009-0001-1365-9109.
Nikola Tietze, Centre Marc Bloch, Friedrichsstraße 191, 10117 Berlin, Germany; nikola.tietze@cmb.hu-berlin.de; ORCID iD: 0009-0001-1281-711X.

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driving force. Along with the other three fundamental freedoms – the free movement of goods, capital, and services – it is one of the four core principles of the EU, promoting pan-European cooperation and the transnationalisation of the European societies (Favell 2014). However, the cosmopolitan dream of a Europe without borders has been deeply undermined in recent years. While the mobility of people across European inner borders has steadily increased in the last decades and these inner borders have been substantially dismantled, we have seen a significant counter-development in recent years. In fact, in the past few years, border controls have been reintroduced and physical fences and borders have been built all over Europe and globally, which was also accompanied by the implementation of stricter immigration laws and policies (Mau 2023; European Parliament 2024). This more recent counter-development signals a remarkable re-evaluation of the principle of free movement, which has served as a cornerstone of European integration efforts for more than half a century.

In view of the current developments, some observers have raised the question of whether the current return of borders and more restrictive immigration policies could be symptoms of a creeping but inexorable "dismantling" or even an extensive "disintegration" of the European Union (Krastev 2020). In other words, the question arises as to whether the current return of borders and border controls marks a departure from the principle of freedom of movement and puts the idea of European integration and cooperation as a whole at risk. It is certainly not our intention to question the fundamental principles of European integration or to sing the EU's swan song with this special issue. The main aim is to critically analyse the multi-faceted social impacts of the principle of free movement of labour. Moreover, it is also intended to show that the examination of the struggles and obstacles encountered in the implementation of the principle of free movement of workers serves as a particularly effective example for exploring fundamental dilemmas and obstacles as well as basic features and practices of both European integration and transnational institution-building in general. A further objective underlying this special issue is of a conceptual nature: namely, to shift the debate on the free movement of labour away from an overreliance on the EU and the history of European integration by means of a more general socio-historical approach to cross-border labour mobility.

From a distinctive socio-historical perspective, the concept of free movement is by no means confined to the EU and its predecessors. Indeed, as will be demonstrated in this special issue, the recruitment of workers from abroad has always been linked to the formation and stabilisation of nation-states and national markets. Furthermore, the principle of "freedom of

invaluable contributions. Additionally, we are grateful to Marianne Adam and the editorial team of HSR for their support throughout the editing process. Finally, we wish to thank Hadrien Clouet for his input during the initial phase of this project.

movement" cannot be considered a self-evident tenet of European integration. In fact, the numerous efforts to promote cross-border labour mobility have led to the establishment of a complex governance regime, consisting of a network of legal principles and governance practices that have been put in place since the beginning of the 20th century and have evolved in intergovernmental forums and through the actions of international organisations (Rass 2010; Rosental 2011; Maul 2019). Concurrently, it is evident that there have been discernible shifts in legal specifications, categorisations of workers, and competing economic and political interests. In consideration of these factors, this special issue is dedicated to the European challenge of regulating cross-border labour mobility, and it undertakes a comprehensive examination of the governance of this regime from a range of different disciplinary and socio-historical perspectives. On the one hand, it focuses on the state regulation of labour mobility, in particular the social security and social rights of cross-border and migrant workers; on the other hand, it focuses on the genesis and institutionalisation of the EU principle of free movement of labour. Hence, this issue situates the principle of free movement of labour in the broader context of labour migration policies, social policies, and the implementation of international norms and administrative practices.

2. The History of European Labour Mobility – A Brief Overview

The free movement of workers was first proclaimed as a fundamental freedom in the context of European politics in 1957 by the Treaty of Rome. Needless to say, the European Union's forerunners were not the only ones to implement international policies related to migration. On the contrary, these policies were rooted in a context of international relations in which the issue of (European) migration was a central concern. International organisations had already laid the groundwork for an international government of migration, that is, for the idea that a rational and coordinated international policy could govern migration. Of course (as noted above) 1945 did not mark the only turning point. The League of Nations supervised forced population movements following the 1923 Treaty of Lausanne, which ended the Greco-Turkish War (Vardağlı 2024). In the 1920s, the International Labour Office (ILO) called for the creation of an international migration policy. The French socialist Albert Thomas, then Director-General of the ILO, stated in 1927:

> The moment has yet arrived for considering the possibility of establishing some sort of supreme supranational authority which would regulate the distribution of population on rational and impartial lines, by controlling and directing population movements and deciding on the opening-up or closing

> of countries to particular streams of immigration. (Parsanoglou and Tsitselikis 2015; Pecoud 2018, 1624)

The post-war period was marked by the systematisation of efforts to internationalise the migration issue (Schönhagen 2023). On the one hand, post-war Europe experienced massive, forced migration (Reinisch and White 2011). On this "wild continent" (Lowe 2012), these migration flows affected tens of millions of people. They were the product of international policies, i.e., they were based on accepted categories of public policy and rational techniques for implementing them. Thus, Catherine Gousseff's work sheds light on the political rationales of the "great ethnic redistribution" in the territories along the Ukrainian-Polish border in 1945 (Gousseff 2015). The historian also highlights the discrepancy between bureaucratic plans and the social reality to which these plans were applied. In addition to this forced mobility, there was the equally forced "immobility" of German prisoners of war. One million of them were imprisoned in France until 1948 and mobilised in the politics of reconstruction (Theofilakis 2014). In this context, international organisations flourished. Thus, the International Organization for Migration (IOM) was created in 1951 under the name Provisional Intergovernmental Committee for the Movement of Migrants from Europe (PICMME) as a body in charge of the refugee problem and European "overpopulation." The organisation had a practical mission: to transport refugees within Europe (and especially from communist countries to capitalist ones, as in the Hungarian revolution of 1956) or European workers to countries considered to be "underpopulated." Its aim was not to protect rights (unlike the Office of the United Nations High Commissioner for Refugees, a remnant of the late League of Nations dating back to 1923), but to move and resettle people with a view to the international reallocation of the workforce.

European policies are thus part of a more general movement to invent an international system of governing migration. The European Economic Community (EEC) Treaty provided the legal basis for the specific intra-EU mobility regime. Article 48 of this treaty particularly addressed the free movement of workers and stated that any unequal treatment of workers on the basis of nationality was to be abolished within the EEC after a transitional period, and workers were granted the right to move freely between EEC countries for the purpose of employment. Subsequently, Regulations No 15/61 and 1612/68 of the Council of the European Communities of 26 August 1961 and 15 October 1968 specifically regulated the framework conditions for the free movement of workers. The free choice of employment within the European Communities was designated as a "fundamental right of workers and their families." According to the regulation, the mobility of labour within the Community "[…] must be one of the means by which the worker is guaranteed the possibility of improving his living and working conditions and promoting his social advancement, while helping to satisfy the requirements of the

economies of the Member States [...]."[2] However, there was already a lively debate at that time on the extent to which the free movement of workers affected entitlement to social security schemes. Previously, Regulations No. 3 and 4/58 dating from 1958 had already provided a binding regulation on the social security rights for migrant workers and their families, which enabled employees from Member States and their families to benefit from unemployment, health and disability, and old-age pension insurance in the country where they work, as well as from family allowances for their children. These social security regulations were the result of a lengthy preparatory work during the 1950s, which preceded the conclusion of the Treaty of Rome itself (Fertikh 2019). Since then, the corresponding regulations have been repeatedly revised and supplemented and have come to cover new categories of migrants.[3] Moreover, rulings by the European Court of Justice have also made it necessary to revise the applicable law (see also Tietze 2025, in this special issue; Geddes 2000b; Ferrera 2005).

In addition to the long-standing debates and the successive adoption of concrete legal measures to promote the free movement of workers, the so-called Schengen Agreement (Schengen Implementing Convention – CISA) was signed in June 1990 as part of the creation of the single market and a single area of security and justice. The Schengen Agreement essentially provides for the abolition of internal border controls and includes compensatory measures necessary for the implementation of this major transformation of the border regimes of the countries that signed the agreement. These measures are, for instance, the standardisation of regulations for the entry and short-term stay of foreigners in the Schengen area, the introduction of the uniform Schengen visa, the determination of the Member State responsible for an asylum application, measures against cross-border drug trafficking, police cooperation, and cooperation between the Schengen States in the judicial system. The Schengen Agreement has not only transformed the established logics and institutions of national border regimes, but it has also significantly facilitated and promoted the cross-border mobility of goods, services, and people and, in this sense, strongly promoted labour mobility. To

[2] Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, p. 475. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31968R1612 (Accessed 18 December 2024).

[3] In April 2011, for instance, the old regulation on the free movement of workers from 1968 was replaced by Regulation 492/2011, which is essentially based on the historical template. See: Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32011R0492 (Accessed 18 December 2024).

date, 31 European countries, both from the European Union and the European Free Trade Association (EFTA), are part of the so-called Schengen area.[4]

After a period of enthusiasm and far-reaching implementation and enforcement, and since the 1990s, not least by linking it to the status of EU citizenship, the principle of free movement of labour has been increasingly challenged by rising political and economic tensions and processes of re-nationalisation (Gülzau et al. 2021; Bickerton et al. 2022). There is growing criticism and awareness, not only in political but also in academic circles, that economic liberalisation may have gone too far and that the liberal principle of "free movement of workers" may have a negative impact on the social stability and cohesion of European societies (Höpner 2017; Krastev 2020; Streeck 2021). Moreover, several studies have highlighted the negative social consequences of the intra-EU mobility regime (Engbersen et al. 2017; Blauberger et al. 2023; Favell 2022) and the pervasive social inequalities in access to free movement (Bernhard and Bernhard 2014; Bruzelius et al. 2017; Heidenreich 2023).

However, sociological studies have shown that the implementation of both the common market and the principle of free movement of workers has already substantially transformed European societies, and that the transnationalisation of European societies cannot simply be stopped or reversed. In fact, local life-worlds and national societies have been significantly transnationalised in the last two to three decades due to increased mobilities and migration flows within Europe and globally (Cresswell 2006; Boswell and Geddes 2011; Deutschmann 2019; Delhey et al. 2020). Hence, in this strand of literature the project of European integration has been seen as a prototypical and outstanding example of a larger trend of transnationalisation (Fligstein 2008; Mau and Verwiebe 2010; Heidenreich 2019; Deutschmann and Recchi 2022). The establishment of a common market based on the four core principles of free movement of capital, goods, services, and labour, as well as the creation of the European Union, has led to a significant advance in the transnational integration of European societies and the subsequent closure of the so-called "Fortress Europe" (Andreas and Snyder 2000; Geddes 2000a; Fisher and Hamidi 2016; De Genova and Peutz 2010).

The "Europeanisation" of national societies has been shaped by a variety of factors (Büttner, Eigmüller, and Worschech 2022), leading to a transformation in the conceptualisation of social (security) rights as defined by territorial boundaries (Ferrera 2005; Rosanvallon 2011; Jureit and Tietze 2015; Comte 2017; Fertikh 2019). A variety of decision-making processes, policy

[4] As of the end of 2024, almost all EU member states (except from Cyprus and Ireland) plus the four EFTA countries Switzerland, Liechtenstein, Norway, and Iceland are part of the Schengen area. See for an overview information provided by the German Ministry of Foreign Affairs https://www.auswaertiges-amt.de/en/visa-service/231202-231202 (Accessed 18 December 2024).

initiatives, and official legal documents have been instrumental in paving the way for the establishment of the European Single Market and other key elements of European integration, leading up to a multi-level migration policy (Boswell and Geddes 2011). Following these developments, numerous studies have highlighted the central role of policy and legislation in facilitating cross-border labour mobility and related integration effects in the wake of the 2004 and 2007 EU enlargements (Palmer and Pytliková 2015; Engbersen et al. 2017; Windzio, Teney, and Lenkewitz 2021). Indeed, the process of Europeanisation is deeply embedded in and driven by networks of expertise and structures of law-making that form the backbone of transnational society-building (Münch 2010; Vauchez and de Witte 2013; Vauchez 2015; Büttner et al. 2015).

3. Studying European Labour Mobility: The Need for a Long-Term Perspective

The studies of labour mobility and migration have been a vibrant area of research since the end of the 1970s (for the most recent see Urry 2000; Recchi and Favell 2009, 2014; Recchi 2015; Geddes, Hadj-Abdou, and Brumat 2020). Labour mobility in Europe has primarily been studied within the framework of European studies, migration studies, or the sociology of European societies. In this context, significant migration flows and patterns have been identified, as well as numerous local effects of the intensification of labour mobility (Lucassen 2006; Mau and Verwiebe 2010, 115-34). These include, for example, brain-drain effects in the sending regions and the multiple impacts of EU mobility in the receiving countries, in border regions, and on local labour markets (Blitz 2014; Delhey, Deutschmann, and Cîrlănaru 2015; Schmidt, Blauberger, and Martinsen 2018; Barbulescu and Favell 2019). Initially, research in this context focused on the role of "pioneers" of EU mobility (Favell 2008; Recchi and Favell 2009). In addition, a growing number of studies have been conducted on the different groups, social classes, and unintended consequences of EU mobility (Bernhard and Bernhard 2014; Barbulescu and Favell 2019; Arnholtz and Lillie 2020; Comte 2019; Wagner 2019; Blauberger, Heindlmaier, and Kobler 2020; Heidenreich 2023).

However, cross-border labour mobility goes back much further than the founding moments of European integration and the institutionalisation of the free movement of workers in post-war Europe (Rygiel 2010; Schrover 2018; Löhr 2021). Historical research shows that the design and state organisation of cross-border labour mobility has been intertwined with processes of nation-state formation and consolidation, as well as with the national determination of social protection and labour markets (Bänziger 2022; Brubaker 1996; Castel 1995; Noiriel 1988; Seeleib-Kaiser 2022). At the end of

the 19th century, the nation-state became the main framework within which governmental and administrative actors, as well as labour market actors (especially trade unions and employers), struggled over the definition of work and unemployment (Topalov 1994; Raphael 1996; Zimmermann 2006), the regulation of working conditions, and the handling of work-related accidents, illness, old age, etc. These actors were also responsible for (or, in the case of national unions, concerned with) the recruitment of cross-border workers, the management of their transportation and stay, or the treatment of their family members (Rass 2010; Rosental 2011; Raphael 2013). Research has already begun to shed light on the differential inclusion of migrants in social protection (Sabates-Wheeler and Feldman 2011; Althammer 2023; Rainhorn and Del Giudice 2023). In this respect, the case of former imperial nation-states with colonies, such as France, provides a particularly instructive example of how the nation-state-driven regime of cross-border labour mobility has produced specific categories of workers, differentiated rules for managing residence, and fragmented rights for dealing with the occupational and life risks of cross-border workers (Cooper 2017; see also Mulonnière and Ricciardi 2025, in this special issue).

Moreover, despite the dominance of nation-states, or perhaps because of it, a specific governmental regime of cross-border labour mobility has always been a matter of international negotiation and an issue for international organisations (Iriye 2002; Rosental 2006; Maul 2019; Rygiel 2021). This is why, from the very beginning, the regulation of cross-border labour mobility has always been linked to international experts and their technical knowledge, such as the ILO, founded in 1919. As early as the 1920s, the ILO adopted a series of conventions dedicated to the rights of migrant workers, promoting equality of treatment between foreigners and nationals in matters of industrial accidents (1925) and pensions (1935), and developing a series of conventions for the protection of emigrants (1926, 1939) (Rosental 2006; Kawar 2022; Fertikh 2023). According to Maul (2019, 91),

> […] the ILO tried to take the debate out of the national framework, carried out statistical research and developed a plan for an international agency whose task was to manage migration flows by channelling them. In a rational way, the flows of labor from areas with a surplus to those with a demand.

The European regimes of cross-border labour mobility since the end of the 19th century have produced not only a variety of ideas about labour migration, but also actors who framed these ideas with statistical, legal, or organisational knowledge (Nützenadel 2020; Renard 2018; Stanziani 2020). After the Second World War, the design, organisation, regulation, and management of cross-border labour mobility could be linked to pre-existing legal categories, and governmental and administrative practices (Rass and Tames 2020). At the same time, governments, experts, entrepreneurs, and

trade unions developed new categories and practices that more or less built on the pre-existing legal instruments and governance patterns developed long before (see Fertikh and Louis 2019; Fertikh 2025, in this special issue). The free movement of workers in Western Europe was one of the regimes of transnational labour mobility that produced new and rearranged legal definitions, categories of workers, economic strategies, and administrative practices. The considerations of Western European and American government representatives, academics, trade unionists, and businessmen regarding the politicisation of economic relations in the inter-war period were a reason to base the regime of transnational labour mobility on the "freedom of movement" of workers (Alacevich 2021, 37-48; Lipgens and Loth 2021; Tietze 2022, 470-1). The principle of free movement of workers was accompanied by the establishment of transnational institutions and rules allowing EEC workers to benefit from social rights outside their country of origin or from a country where they were or had been employed (Comte 2017; Ferrera 2005; Fertikh 2019; Fertikh 2025, in this special issue). It should contribute to the denationalisation of economic relations and thus to their depoliticisation within Western Europe. However, the motivation for the establishment of this principle was actually also based on national interests, such as the urgent need of state and business actors in the Federal Republic of Germany to be able to operate without stigmatisation and discrimination at the domestic political and economic level, as Emmanuel Comte shows in this special issue. Moreover, the regime of cross-border labour mobility, based on the freedom of movement of workers, developed alongside colonial regimes of labour mobility (which persisted after the dismantlement of the colonial empires; Brown 2022) and the strengthening of bilateral agreements on labour migration, which led to the establishment of an international labour market in Western and, to some extent, Eastern Europe (Rass 2009).

While the social science literature on European integration provides a comprehensive overview of the current status and significant impacts of labour mobility based on the free movement of EU workers, it focuses mainly on processes that have taken place in the last two to three decades. Moreover, many studies assume the implementation of labour mobility within the EU, overlooking the complexity of its actual formation. The latter is, of course, based on the distinction between workers with EU citizenship and full freedom of movement and those without EU citizenship and with freedom of movement subject to conditions and restrictions (see, for example, Jamid 2025, in this special issue). Nonetheless, it is entangled with labour categorisations and specific regulations that draw on the classic nation-state driven regime of labour mobility to regulate intra-EU labour migration (see Bommes and Geddes 2000; Tietze 2025, in this special issue) and, conversely, from the EU-driven regime of freedom of movement to regulate and redefine extra-EU labour migration (Geddes 2001), for example through the EU Blue Card or

the creation of the category of "talent migrants" (see Beronja 2025; Thibault 2025, both in this special issue). They mainly focus on the existing framework of EU integration (Palmer and Pytliková 2015), without taking into account the changes that the principle of free movement of workers and their welfare state protection have undergone since the Treaty of Rome (Pataut 2018). On the one hand, the categories of employment and work contracts affected by this principle have diversified, for example subcontracted workers, posted workers, and seasonal workers, as we can learn from the contributions of Weill and Prigent (2025) as well as Börner (2025) in this special issue. On the other hand, migration policies have been developed at the EU and national levels to attract highly skilled workers from non-EU countries (see Beronja 2025; Thibault 2025, both in this special issue). Moreover, studies of cross-border labour mobility within the EU have a strong political economy orientation (Gabriel and Pellerin 2008). Little attention has been paid to governmental and administrative practices related to cross-border labour mobility in the EU and, in particular, to "borderline situations" of migrant workers with or without EU citizenship. Such situations may include intermittent or precarious employment and activity, back-and-forth between education and employment, and other analogous circumstances.

4. The Emergence of European Labour Mobility through the Prism of *Sociohistoire*

To overcome these shortcomings, we propose to consider European labour mobility from two perspectives. Through nine articles, this issue intersects the study of the production of labour mobility through the principle of EU freedom of movement, with the consideration of labour mobility based on the patterns of colonial, national, and international governance of transnational labour. By intersecting these two research perspectives, we follow Kiran Patel's advice to "provincialise" European studies and "decentralise" the research focus on transnational labour mobility from its convergence with the assessment of European integration (Patel 2013; see also Favell 2015). Instead, in this special issue, the authors consider the governance of labour mobility within a broader historical framework, focus on the making of international legal and administrative rules governing cross-border labour mobility, and examine the relationship between labour migration and migrant workers' access to social rights, all while paying attention both to the effects of language (Bartels et al. 2023) and to the institutionalisation of different categories of workers and forms of labour mobility.

The issue considers, on the one hand, the processes of categorising workers and forms of labour mobility, such as the construction and use of the

categories of "colonial workers" (Mulonnière and Ricciardi 2025, in this special issue), "highly skilled tech workers" or "workers with talent passports," but both without EU citizenship (see Beronja 2025; Thibault 2025, both in this special issue), or of the unemployed with or without EU worker status (see Tietze 2025, in this special issue); such as the differentiation between labour mobilities through posting, subcontracting, and seasonal (or short-term) employment (see Börner 2025; Weill and Prigent 2025, both in this special issue). In this respect, the articles deal with the structures that are built through categorisation processes and that give order to the realities of labour mobility. On the other hand, the authors of this issue examine the actors involved in the categorisation and institution-making processes, such as the experts who have worked on the European coordination of social security systems (see Fertikh 2025, in this special issue) or the representatives of the EU Member States (see Comte and Tietze 2025, in this special issue). The articles then shed light on the transformations of the legal and administrative categories that have organised the European management of labour mobility since the 1950s and sought to make the term "immigrant" obsolete, as some of the contemporary players put it (Fertikh 2025, in this special issue). The issue brings together different historical periods and heterogeneous situations at different scales of European governance of labour mobility. For example, Moroccan graduates in contemporary France (Jamid 2025, in this special issue), (post)colonial workers from North Africa in France between 1915 and 1960 (Mulonnière and Ricciardi 2025, in this special issue), and low-wage migrant workers in Germany during the COVID-19 pandemic (Börner 2025, in this special issue) are juxtaposed with international experts on social security coordination in the 1950s (Fertikh 2025, in this special issue) and actors in the Court of Justice of the European Union (CJEU) after the introduction of EU citizenship in 1992 (Tietze 2025, in this special issue). By juxtaposing very specific thematic contributions, the issue aims to enable comparisons and draw attention to connections between distant spatio-temporal moments.

The two methods, which consist of, on the one hand, focusing on the relations between structures and actors through the study of categorisation processes and, on the other hand, establishing relations between different historical situations through comparison, are fundamental to the French approach of *sociohistoire*. This approach combines concepts from the social and historical sciences and provides a methodological toolbox for studying categorisation processes and comparing actors in different historical situations. As Bénédicte Zimmermann has shown, research based on the *sociohistoire* approach sheds light on the interplay between long-term developments of institutional, governmental, and market structures, and short-term singular actions situated in space and time (Zimmermann 2015). This interplay is related to the "invisible threads" (Noiriel 2006, 4, own translation) that connect the use of a category (a legal norm, an administrative rule or

procedure, a status definition, etc.) at a given moment to its use in other time periods, at different institutional scales or in different legal spaces. Examining both the relationships between institutional, governmental, and market structures and the actors who deal with these structures, as well as the "invisible threads" between different historical moments and situations, provides a means of examining the power relations woven into social structures, the interdependencies of actors, and the uncertainties of practices (For a similar take, see also Diaz-Bone, Didry, and Salais 2015).

In terms of the production of European labour mobility, power relations, interdependencies, and uncertainties are embedded in knowledge (professional expertise, know-how, practices) or so-called "technologies of the intellect" (Goody 1968). They also emerge from the entanglements of the multiple migration regimes that have governed cross-border labour mobility in contemporary EU Member States in the past and present, with different rationales. Starting from a problem (the governance of labour mobility) rather than a given institution, in this special issue, the authors approach power relations, interdependencies, and uncertainties by studying the histories and manifestations of European knowledge production (Roa Bastos and Vauchez 2019) and by highlighting the entanglements and contests of contradictions between patterns of migration regimes that occur in specific historical situations or at specific institutional scales.

5. The Structure of this HSR Special Issue

In the light of the *sociohistoire* approach and with the aim of decentring the view on the free movement of workers in the EU, this special issue begins with two articles on the mobility of workers and their social security before and at the beginning of the European Communities. *Hugo Mulonnière and Ferruccio Ricciardi* examine the labour mobility of North African workers in France (1915–1960), focusing on the relationship between labour mobility and social rights. They highlight the imperial rationale that governed this relationship even after the independence of Morocco, Tunisia, and Algeria. *Karim Fertikh* shows how experts used the legal knowledge and instruments developed during the inter-war period and the decade after the Second World War to develop the coordination of social security systems during the period of the EEC. Following these two contributions, *Emmanuel Comte's* article on the establishment of the principle of free movement in the 1950s and 1960s shifts the focus from social rights and social security for workers to state control over human mobility. He looks at governments and their motivations for advocating liberal migration policies, emphasising Germany's pivotal role.

The following three essays focus on the categorisation of workers and its consequences for their freedom of movement and social security.

Adrien Thibault, *Hicham Jamid*, and *Sanja Beronja* address the issue of so-called talent migration from different perspectives. While Adrien Thibault studies the legislative files of the 2006 and 2016 French laws in order to show the emergence of a privileged group of labour migrants, Hicham Jamid draws on administrative "paper careers" (the successive administrative statuses and positions held by foreigners since they have arrived in France; Spire 2005) to describe the difficulties, and not least the discrimination, faced by Moroccan engineers and managers who graduated in France and chose to stay and work there. Sanja Beronja, meanwhile, focuses on the experiences of tech professionals from Serbia with an EU Blue Card in Germany (2016–2022). She highlights their "living in a bubble," i.e., between privilege and limitation.

The last three essays address, from different perspectives, the categorisation of workers whose freedom of movement is far more restricted than that of educated, middle-class migrant workers: posted workers, seasonal workers, the unemployed, etc. *Pierre-Edouard Weill and Pierre-Guillaume Prigent's* article focuses on the changes in journalistic coverage of posted workers in France since the early 1990s. Applying a Polanyian framework of social embeddedness, *Stefanie Börner* asks whether the working conditions of seasonal, posted, or subcontracted migrant workers have improved after 2020 and the experiences of the COVID-19 pandemic, and whether a process of social (re)embedding can be observed. With regard to the access of unemployed EU citizens to social benefits in the context of their labour mobility, *Nikola Tietze* examines the "categorization work" of the actors at the CJEU on the basis of three cases between 1998 and 2015.

The nine essays in this special issue are summarised in two epilogues. Based on the EU principle of freedom of movement, *Antoine Vauchez* summarises the developments in labour mobility and the different lines of thought developed in the contributions. *Isabella Löhr* takes up the different themes of the articles and maps out the space in which labour migration has been constructed in Western Europe.

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"The Making of European Labour Mobility"

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Undesirable Workers? Mobility and Social Rights of (Post)Colonial Workers from North Africa (France, 1915–1960s)

Hugo Mulonnière & Ferruccio Ricciardi *

Abstract: *»Unerwünschte Arbeiter? Mobilität und soziale Rechte von (post-) kolonialen Arbeitern aus Nordafrika (Frankreich, 1915–1960er Jahre)«.* This article explores the relationship between labor mobility and social rights by studying the case of the so-called "North African workers" (Algerians, Moroccans and Tunisians) employed in the French metropolis between the beginning of the First World War and the independence of the French colonies in the Maghreb. By drawing on a huge corpus of administrative archives analyzed for the entire colonial period, it examines the relationship between legal status, territorial mobility, and access to social benefits, and it shows the ways in which the management of the North African workforce challenged the contours of the French national social state. The case of North African workers who migrated to France in this period, in fact, provides evidence about the way a differentiated and discriminatory regime of employment and social protection was set up within the French "Imperial nation-state," by making social citizenship contingent upon criteria relating to colonization, intra-imperial mobilities and European integration. As a result of the distortion between legal categories and administrative practices, this dynamic of exclusion/inclusion made North African workers undesirable from the point of view of their social and political integration, but not their market integration.

Keywords: North African workers, French empire, mobility, social rights, racial discrimination.

1. Introduction[1]

This article explores the relationship between labor mobility and social rights by studying the case of the so-called "North African workers" (Algerians,

* Hugo Mulonnière, Laboratoire interdisciplinaire pour la sociologie économique (LISE), 2, rue Conté, 75003 Paris, France; hugo.mulonniere@lecnam.net. ORCID iD: 0000-0002-3817-5549. Ferruccio Ricciardi, Laboratoire interdisciplinaire pour la sociologie économique (LISE), 2, rue Conté, 75003 Paris, France; ferruccio.ricciardi@lecnam.net. ORCID iD: 0009-0004-0333-9162.

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Moroccans, and Tunisians) employed in the French metropolis between the beginning of the First World War and the independence of the French colonies in the Maghreb.[2] For the purposes of our study, "social rights" are understood to encompass all rights relating to the protection of individuals against various social risks (from social security rights to employment rights). The article examines the relationship between legal status, territorial mobility, and access to social benefits by shedding light on the ways in which the management of the North African workforce[3] challenged the contours of the French national social state, and by stressing how the racialization of North African workers affected their access to benefits and employment. Drawing upon previous work on the subject (Viet 1998; Spire 2003, 2005a; Lewis 2010; Mulonnière 2023b), this article confirms the "blurring opposition between foreign and national" (Spire 2005a, 192) over a longer period of time and from the point of view of the management of major social risks. It also aims to interrogate the notion of undesirability often attached by administrators to these workers (Blanchard 2013; Dornel 2025), who were generally considered to share common cultural, psychological, and physical – i.e., racial (Guillaumin 1972; Stovall 2005; Camiscioli 2009) – characteristics, through the prism of access to social rights. This category, which has no solid legal basis and was coined at the end of the 19th century, refers to North Africans whose socio-economic position is considered marginal by French authorities (unemployed, delinquents, criminals, unfit for work, etc.), but it is also used to describe almost all colonial migrants, whose subaltern status is the effect of the system of separation established in the colonies and guaranteed by the so-called *code de l'indigénat* (Dornel 2025).[4] More generally, the term has also been used to describe colonial migratory flows in the broadest sense. For instance, in 1925, Octave Depont, a former administrator of *commune mixte* (*mixed municipality*) in Algeria who had become an influential expert on migration on the eve of the First World War, wrote that the migration of Algerians to mainland France had become "almost undesirable" (Depont 1925, 429).

[2] While Algeria, since 1848, has been directly attached to France and its inhabitants considered as subjects (but not citizens), Tunisia and Morocco were under French "protection" via the protectorate treaties of 1881 and 1912, which maintained local sovereigns and led to the establishment of a dual administration in these territories (Perrier 2023). Their inhabitants, qualified as *protégés*, were considered as foreigners. Tunisia and Morocco were therefore not under the authority of the Ministry of Colonies, but of the Ministry of Foreign Affairs, unlike the other *protégés* from Indochina (Cambodia, Annam, Tonkin, Laos, and Cochinchina). By referring to these three populations as a single homogeneous group, the category of "North African workers" – which was widely used by the French administration – involves a racial and cultural essentialization that was inseparable from the colonial fact.

[3] We will not consider the mobility of soldiers and students, which would require a separate study.

[4] The *code de l'indigénat* was a special administrative-penal regime reserved for indigenous peoples that was highly discriminatory (Urban 2011).

Undesirability is therefore an analytical tool that can be used to understand the asymmetrical construction of social protection for these workers.

Several studies have highlighted how the phenomenon of migration in Europe since the 19th century has shaped social protection systems, in terms of defining the rights and duties of migrant workers in relation to the national workforce with its risk-pooling mechanisms (Feldman 2003; Rosental 2006; King and Winter 2013). Socio-economic migration played an important role in defining the contours of emerging social protection systems. Within the context of an emerging bilateral and international treaty framework, states often favored extending certain rights (e.g., the right to a pension) strategically, in the interest of promoting reciprocity and fair competition on an international scale (Herren 1993; Rosental 2011). France's geopolitical interest in granting rights to North African workers was reflected in various forms of legal and practical discrimination that had an impact on policies for managing this specific workforce. All these factors contributed to a process of racialization, whereby the legal regime reserved for North African workers was that which corresponded to their origins in North Africa. At the same time, these mobile workers repeatedly demanded the right to access a whole range of social benefits, confronting the French state with its contradictions, in relation to its declared and growing ambitions for social integration (Blanchard 2024). These contradictions became increasingly visible as the European integration process was confronted with the legacy of the pre-existing imperial system (Brown 2023).

The case of North African workers who migrated to France between the First World War and the 1960s, provides evidence about the way a differentiated and discriminatory regime of employment and social protection was set up within the French "Imperial nation-state" (Wilder 2005). This differentiation was achieved by making social citizenship contingent upon criteria relating to colonization, intra-imperial mobilities and European integration (Laschi, Deplano, and Pes 2021; Cooper 2014; Roinsard 2016). The creation, instrumentalization, and implementation of such differentiated social protection policies in metropolitan France constitute a field that lends itself to sociohistorical observation through archival research.[5]

[5] A huge corpus of administrative archives was mobilized for this research, including, for example, reports from the Ministry of Labor or the Ministry of Colonies, correspondence between the various administrations, correspondence between public officials and private employers, memoranda from the Ministry of Foreign Affairs or the Ministry of War, etc.

2. The First World War: Controlled Mobility, Discrimination, and Claimed Rights

During the First World War, the French State took it upon itself, as part of its industrial mobilization effort, to recruit foreign workers and to make them available to French companies and the administration. In short time, the State drew upon the resources of its colonial empire to mobilize around 180,000 approximately: 75,000 Algerians (mainly of Kabyle origin), 35,000 Moroccans, 18,500 Tunisians, 5,500 Madagascans, and 49,000 Indochinese (Meynier 1981; Horne 1985; Stovall 1993; Dornel 1995, 2014, 2025). Most of these colonial workers – also referred to as "exotics" or "natives" – were managed through the *Service de l'organisation des travailleurs coloniaux* (SOTC) (Colonial Workers' Organisation Service). The SOTC was created in 1916 under the aegis of both the Ministry of War and the Ministry of the Colonies. It managed this requisitioned workforce from the time it arrived at the *dépôt* in Marseilles until it was transported to the places of work (war industry, agriculture and public works, etc.) (Dornel 2025). These figures do not take into account the so-called free workers (*travailleurs libres*), colonial workers who came on their own initiative or as part of old migratory channels, for example from Algeria (around 30,000 workers arrived in 1915) or Morocco, nor the soldiers from the French empire (Meynier 1981; Antier 2008). Although most of these men returned home, around 11-12,000 colonial workers obtained permission to stay in metropolitan France at the end of the conflict, whereas in the early 1920s, following the massive resumption of migratory flows from the Maghreb regions, there were approximately 100,000 Algerians and 10,000 Moroccans settled in France (MacMaster 1997; Dornel 2018).

Throughout the conflict, SOTC workers could not move freely within France or, at least, their movements were severely restricted by a system of *laissez-passer*, a circulation document issued by the French authorities.[6] Segregated in barracks, often outside urban centers, and grouped together according to ethnic criteria, SOTC workers were subject to a disciplinary regime "that should be similar to that applied to military personnel"[7] and was also inspired by a paternalistic approach. Under this system, fines imposed on factory workers took the form of deductions from their wages, the proceeds of which were to be used to "improve conditions for the material and moral well-being of the community" (canteens, financing of Muslim festivities, creation of educational and recreational rooms, Moorish cafés, etc.).[8]

[6] Service Historique de la Défense (SHD), Vincennes, GR 7 NN 9 1050, note from the SOTC chief to the état-major, 28th of November 1916.
[7] SHD GR 7 NN 9 1047, circular of the 12th of June 1916 (Direction des Troupes coloniales).
[8] SHD GR 7 NN 9 1051, circular of the 9th of May 1917 (SOTC).

The management of this workforce was imbued with a racial framework. The SOTC usually employed former colonial officials or soldiers. These supervisors acted as intermediaries with employers, carrying out both monitoring and assistance activities. Moreover, any work refusal or unexpected breach of contract (*rupture de contrat*) became a form of desertion which could be punished by the war council (Jagielski 2008). A 1916 circular, formalized by a decree in 1917, introduced a photo identity card for use as a travel document by all "colonial and foreign workers,"[9] which was both a passport and a residence permit: green for industrial workers and buff for agricultural workers (Dornel 1995; About 2007). At the workplace, this document was exchanged for a receipt that served as a residence permit within the municipal boundaries.[10] It was explicitly designed with the idea that there was a specific problem of "instability" especially among North Africans, who were easily "poached" by illegal recruiters or even practiced "voluntary unemployment."[11] In June 1916, for example, the Prime Minister, who was also Minister of Foreign Affairs, highlighted the large number of Moroccans who asked to be repatriated, citing "their fatigue or state of health."[12] The military authorities saw this more as a confirmation of their opinions about the psychology and the poor health of North Africans than as a reason to significantly improve the material conditions of their work. In fact, when supervising this workforce, the French administration seized upon the racial stereotypes that advocated the racial division of labor according to a logic of sorting (each race was supposed to correspond to particular physical and psychological attitudes that were thought to determine professional skills) (Dornel 1995, 2025). These practices contributed to defining the contours of "undesirable" workers, i.e., those who would be difficult or impossible to assimilate into the national community (Stovall 1993; Blanchard 2013).

Despite the formal assertion of equality in the application of labor legislation (for example in relation to work time and pay),[13] this was circumvented in practice. The deduction of specific "maintenance costs" (*frais d'entretien*) from the wages of North African workers meant that these workers were not paid at the same level as French or European workers (Nogaro and Weil 1926). In addition, some labor laws were applied to them in a discriminatory way. This was the case for legislation relating to workplace accidents (law of 9 April

[9] SHD GR 7 NN 9 1047, circular of the 26th of April 1917 (SOTC).
[10] SHD GR 7 NN 9 1047, circular of the 8th of June 1916 (Ministère de l'Intérieur).
[11] SHD GR 7 NN 9 1047, letter from general Famin to the Foreign Affair minister, 20th of June 1916.
[12] SHD GR 7 NN 9 1047, letter from president of Council to War minister, 6th of June 1916.
[13] SHD GR 7 NN9 1047, Regulation of 9 February 1916; Instruction for the application of the 14th of September 1916 decree, *JORF*, 17 September 1916, p. 8208-8210; *Bulletin officiel des ministères de la Guerre, des travaux publics et des transports, de l'agriculture et du ravitaillement, de l'armement et des fabrications de guerre*, 30th of May 1918. On this topic see Blonz-Colombo (2021, 84-5).

1898).[14] While Algerian workers in most companies had been able to benefit from this legislation since 1910 (Depont 1914), the *protégés* (i.e., workers from the Protectorates of Morocco and Tunisia) did not initially have access to the same conditions. Since these workers belonged to a foreign state, they received a one-time capital payout instead of a regular pension in compensation for the disabling workplace injuries they suffered in metropolitan France. It seems that officials at the Ministry of Labor were occasionally able to exempt *protégés* from these disqualifications – sometimes distinguishing "French *protégés*" from "foreigners."[15] However, Tunisians and Moroccans working in France had to wait until the 1920s for legislation to clearly extend rights to a compensatory pension to victims of workplace accidents who resumed residence outside the metropole (Mulonnière 2023b).

North Africans were also entitled to benefit from the 1910 law on retirement pensions for old workers and farm laborers (*loi sur les retraites ouvrières et paysannes*) (Faure 2002). Furthermore, in December 1916, a circular even specified that the *protégés* were entitled to all the benefits and allowances provided for in this law, such as invalidity pensions and death insurance, which had previously been reserved exclusively for French nationals.[16] This measure was supposed to encourage recruitment in the protectorates, where such benefits did not yet exist (Guelmami 1996; Blonz-Colombo 2021; Perrier 2022), and to persuade workers to contribute to their retirement: like many others, in fact, they refused to contribute in response to a law that promised them an income only after the age of 60.[17] This attitude reflected the discrepancy between the aspirations of the young men, most of whom wanted to build up capital before returning home, and the rights granted by the state to the working class.

More generally, some colonial workers saw their contract as a vehicle for a set of rights over which they wanted to have control and, for some, as a tool for achieving fuller citizenship. For some, their stay on the French mainland was an opportunity to apply for naturalization, a request that provoked an angry reaction from the Minister of War "since it tended to remove colonial workers from the authority to which they belonged by virtue of a contract freely entered into."[18] These demands for greater rights concerned not only North Africans but also workers from exploitative colonies in Madagascar

[14] *Journal Officiel de la République Française*, 17th of September 1916, p. 8208-8210.

[15] Centre des archives diplomatiques de Nantes (CADN), 1MA/100/336B, Letter from the chief of the supervisory authority for workers' compensation insurance companies to the Resident general of Morocco, 4 December 1919.

[16] CADN, 1MA/100/333, circular of the 1st of December 1916 (Ministère de la Guerre).

[17] SHD GR 7 NN 9 1046, Letter from General Famin to the directors of the factories employing Algerian workers, the commander of the Algerian workers' group and the North African labor inspectors, 16th of October 1916.

[18] Archives nationales d'outre-mer (ANOM), Aix-en-Provence, AFFPOL, 61COL1492, letter from the Minister for War to the Commander of the Colonial Workers' Depot and the Commanders of Colonial Workers' Groups, 6 June 1917.

and Indochina, who were brought to metropolitan France under more restrictive contracts than North African workers were. Some workers from these colonies did not hesitate to claim rights acquired or supposedly acquired during their professional experience in metropolitan France, while trying to establish a contractual relationship of reciprocity with the state-employer. Sometimes, for example, their claims related to the *délégation de solde* or *délégation de secours*, a monthly deduction from the salary of certain colonial workers from Madagascar and Indochina, which represented a sort of family allowance that these workers were supposed to deposit before they left for France. It was subject to negotiation, whether it was to adjust it to a possible drop in salary,[19] to suspend it, to modify it due to a change in status,[20] or to obtain an exemption when the beneficiaries of the allowance were no longer alive.[21] In any case, for colonial workers, the possibility of benefiting from a right to reside in metropolitan France in the months following the First World War often depended on the possibility of renewing their contract as "free workers" in a company working on reconstruction. In fact, between 5,000 and 6,000 Algerians and 2,000 Moroccans were officially authorized by the Ministry of War[22] to continue working for the company that had employed them during the conflict (Dornel 2018).

3. Redefining the Boundaries of the National Labor Market and Social Protection during the Inter-War Period

During the inter-war period, Algerian, Moroccan, and Tunisian labor mobility to metropolitan France took place within a differentiated normative framework imposing upon subjects and *protégés* differentiated conditions for gaining access to the metropolitan labor market and to the social rights enjoyed by French workers, which increased over the period.

The presence of North Africans in metropolitan France was growing. From 1919 to 1924, any candidate for departure from Algeria who was able to obtain an identity card could move to the metropolis without any additional justification. This relative freedom of movement led to a significant increase in departures in the first half of the 1920s. They grew by a factor of 13 between 1920

[19] ANOM, AFFPOL, 61COL1462, letter from the Under-Secretary of State for War to the Commander of the Colonial Workers' Depot, 9 January 1919.

[20] ANOM, AFFPOL, 61COL1462, letter from the Minister of War to the Minister of Colonies, 10 May 1917; ANOM, AFFPOL, 61COL1462, letter from the Minister for War to the General in command of the troops of the East Africa Group, 24 July 1917.

[21] ANOM, AFFPOL, 61COL1462, letter from the Under-Secretary of State for General Administration to the Minister of Colonies, 21 August 1917.

[22] We can find many lists of Moroccans authorized to stay in CADN, 1MA/11/336 A.

and 1924: in 1924, around 100,000 Algerians were settled in metropolitan France. The arrivals of Algerian migrants caused concern in French public opinion. An administrative consensus emerged calling for greater regulation, which took shape in 1924 in a set of circulars, updated in the following years (Massard-Guilbaud 1995; MacMaster 1997; Rosenberg 2006). They effectively suppressed the freedom of movement between Algeria and metropolitan France by setting out a series of preconditions for emigration (medical examination, payment of a deposit for repatriation costs, etc.).

Conditions were even more stringent for Moroccans, making it practically impossible for them to emigrate legally. They passed as illegal immigrants through Algeria, sometimes being provided with an Algerian identity card. Alternative routes took them through Tunisia, Spanish Morocco, or the international zone of Tangiers (Ray 1938; Atouf 2004).[23] Once in France, Moroccan and also Tunisian *protégés* were subject to the same rules as foreign migrants, including specific rules requiring the obtention of an approved work contract and an identity document prior to entry into metropolitan France. In effect, these conditions made the presence of these workers conditional upon prior determination of their economic usefulness. These measures were reinforced throughout the 1920s, in line with the principle of "protecting the national labor market" (Spire 2005a; Rygiel 2006).

Both subjects from French Empire and *protégés* were suspected by the French authorities of taking advantage of unemployment benefits. They regularly argued that these migrants merely sought to settle in France so as to live off of unemployment benefits. Representations of North African immigrants as a class of "professionally unemployed" workers underestimated the fact that access to unemployment benefits depended on a number of factors (minimum period of residence in the commune, arbitrariness of the local decision-makers who grant the benefits, etc.), which effectively deprived many migrants of these rights. Jean Wilms, a reporter for *La Vigie marocaine,* devoted a series of articles to Moroccan workers in France in the early 1930s, writing that unemployment benefits were difficult to obtain "even in Saint-Denis," a popular town on the outskirts of Paris whose communist-led municipal authorities were known for their open social policies towards foreigners. Other testimonies from militant journalists show that in some municipalities, unemployment benefits were denied to North African workers who were known to have attended nationalist or communist political meetings.[24] In this context, repatriation – the costs of which were covered by a bond paid by the migrant prior to entry – was sometimes used in a discretionary manner by

[23] Archives nationales (AN), Pierrefitte-sur-Seine, F7 15174, the Director of SAINA to the Paris Police Prefect, 21 March 1930.

[24] "Contre les Nord-Africains de Paris. Les persécutions contre les travailleurs continuent et s'aggravent," *Le Populaire*, 20 November 1934.

local labor offices and/or prefectures to get rid of these workers (De Barros 2006; Lewis 2010).

Since the mid-1920s, a number of *Services d'assistance aux indigènes nord-africains* (SAINA) (Assistance Service for Indigenous North Africans), operating under the authority of certain prefectures and sometimes in cooperation with special police brigades, monitored and assisted Algerian subjects and *protégés* living in several urban areas of metropolitan France. In many respects, the SAINA in Paris was a police experiment in the social supervision of North Africans, conducted with the collaboration of social and public-health institutions. The SAINA initiative brought together a placement office, hostels, a dispensary, and even, from 1935, a Franco-Muslim hospital in the inner suburbs in the town of Bobigny. The SAINA's management team was composed of former colonial civil servants, and its agents acted as intermediaries not only between workers and employers, but also between workers and the various departments responsible for allocating benefits (Rosenberg 2004; Blanchard 2011; Prakash 2022).

However, this coordinated approach to the supervision of North African workers did not correspond to any comparable unity of action in terms of social protection for North Africans, whose access to social benefits varied according to their status. For example, while Moroccans as *protégés* were theoretically excluded from unemployment benefits in the absence of a reciprocity agreement, in practice some municipalities have often – but not always – granted them relief if they could prove the required period of residence.[25] As for assistance laws (medical assistance, assistance to the large families, to pregnant women, to the insane, etc.), their application to Algerians depended on the discretion of local officials, whereas Moroccans and Tunisians were more often excluded as foreigners (Ray 1938). The situation became clearer in 1937–1938, following the proposals of Léon Blum and the *Haut comité méditerranéen* (*HCM*, Mediterranean High Committee). Although the HCM did not broadly question colonization, it was a consultative body that proposed reforms intended to make France's "Muslim policy" more egalitarian, and it advocated for the harmonization of rights among Algerians and *protégés* (Mulonnière 2023c). From February 1938 to December 1941, a series of measures effectively extended access to the benefits of the main assistance laws to North Africans, even if under unequal condition. The *protégés* had access to a form of free hospital assistance, but in principle their country of origin was expected to reimburse the cost of hospitalization.[26] Furthermore, assistance for the elderly and the incurably ill and a series of birth benefits

[25] AN F7 15174, Letter from the Rhône Prefect to the Minister of the Interior, 10 December 1932.

[26] Circular of the Minister of the Interior, 15 February 1938; *Bulletin du secretariat d'État de la Famille et de la Santé*, Circular of 17 May 1940 "on hospitalisation of French nationals and foreign nationals from countries with which France has not signed a reciprocity agreement"; laws of 25 September (*JORF*, 30 October 1941) and 21 December 1941 (*JORF*, 29 December 1941).

(birth bonuses and allowances to encourage large families) were not extended to North Africans, the latter being reserved only for children born to an Algerian father and a "French" mother (i.e., not dependent on the civil status of Muslims) (Lewis 2010; Mulonnière 2023b).

The *protégés* benefited from social insurance (*assurances sociales*), created by the laws of 1928 and 1930, but, as other foreigners, were excluded from the surcharge and solidarity funds. However, for those who returned in North Africa, effective access to benefits was hindered by the difficulty of controlling the allocation of funds.[27]

Algerian, Moroccan, and Tunisian workers employed in companies providing family benefits, mainly those affiliated to the *Caisse de pension de la Région parisienne* from 1922 onwards, who could prove that they were fathers (and certify their family responsibilities), received benefits for their children, whether they lived in metropolitan France or in North Africa (Lygrisse 1983; Blanchard 2024). The law of 11 March 1932, which generalized the extension of family allowances and established the principle that benefits were only available to families residing in mainland France, had the effect of excluding many North African workers, since most of them had left their children in their territory of origin. Officials at the Ministry of Labor were reluctant to recognize the inclusion of children living in Algeria within the scope of the law on family allowances because of the alleged difficulty of checking the identity and parentage of the children in question. The resulting exclusion of children living in Algeria from family benefits in metropolitan France also reflected the desire to avoid any measures the administration saw as encouraging emigration to mainland France and the birth rate of natives in North Africa, whose demography was a constant source of concern for the French authorities (Kateb 2001; Lefeuvre 2005). In this context, demands for equal rights, access to family allowances, and better access to unemployment benefits were among the watchwords of the PPA-MTLD, the Algerian nationalist organization, but also of the communist trade union (CGT) and the French communist party (PCF), which at the time were both seeking support in North African circles. Reports by police officers specially assigned to monitor North African activists show that these demands featured prominently in processions throughout the 1930s, whether in one-off mobilizations, anti-fascist rallies, or traditional May Day parades:

> "Extension of all social legislation to North Africans."
>
> "Family allowances. We want family allowances for our children who stayed in Algeria."

[27] Centre d'histoire de Science Po (CHSP), Paris, JU 11, Laroque Pierre, Ollive François, "Les Nord-Africains en France," Annexe au rapport no. 3 du Haut comité méditerranéen, 1938, p. 171.

"Our family allowances."[28]

Under the Popular Front government, the extension of benefits to the families of North Africans living overseas was one of the key proposals in the wide-ranging report presented to the HMC in 1938 by Pierre Laroque and François Ollive, two young auditors at the Council of State. In their opinion, the extension of benefits to North African families was a question of basic fairness:

> this assimilation seems to correspond to the most elementary equity: family allowance is not an Incentive to birth, it is an element of the salary; it is therefore difficult to understand why a worker should be deprived of part of his salary for the sole reason that he has left his children in his country of origin.[29]

Laroque and Ollive therefore advocated for a change in the law to extend the benefit to children living in North Africa, but at a reduced rate to reflect the local cost of living (Cooper 2019; Mulonnière 2023c). Legislative debates over their proposal, which did not receive unanimous support, were delayed by rising international tensions and the outbreak of the Second World War.

4. The Second World War: Supervised Workers in the Wartime Welfare System

The Second World War led to the suspension of the so-called free migration regime between the territories of North Africa and the metropole. In the autumn of 1939, a ministerial office long planned by the Third Republic was set up to supervise the flow of workers from the colonies during wartime. This new administrative structure was called *Service de la main-d'oeuvre indigène nord-africaine et colonial* (SMOI) (North African and Colonial Indigenous Labor Service). Between October 1939 to June 1940, around 22,000 North African workers (16,000 Moroccans and 6,000 Algerians) as well as 20,000 Indochinese arrived in France as "supervised workers" (*travailleurs encadrés*), recruited on a voluntary basis under contracts lasting from six months to one year, which prohibited them from leaving their employer, controlled their mobility and provided for their repatriation at the end of the contract.

Unlike the free workers who settled in France before the war, these "supervised workers" were governed by a special statute conceived as a transposition of colonial legal differentiation to metropolitan France (Mulonnière 2023a). Far from applying labor legislation, this statute placed supervised

[28] SHD GR 7 NN 9 1053, Parade of the 1st of May, 3 May 1938; North-African participation to the Parade organized by the Rassemblement populaire, 13 May 1938; SHD GR 7 NN 9 1054, North-African participation to the meeting of the Mur des fédérés, 23 May 1939.

[29] CHSP, JU 11, Laroque Pierre, Ollive François, "Les Nord-Africains en France," Annexe au rapport no. 3 du Haut comité méditerranéen, 1938, p. 172.

workers within a legal framework that was generally less favorable than the general common framework, and shaped labor rights that differed between the North Africans and the Indochinese, particularly in terms of remuneration. For example, the Indochinese only received around 25% of their total remuneration, while the salaries of the North Africans were subject to significant deductions linked to "introduction costs" in the metropolis (Luguern 2021; Smith 2013). The social protection regime for "supervised North African workers" seems to have been closer to the metropolitan common framework regime than to the Indochinese one. The French authorities in North Africa and the Minister of Foreign Affairs wanted to avoid the political and social consequences of integrating their natives into a regime too far removed from that of free workers in peacetime (Mulonnière 2023b).[30]

Almost 15,000 supervised workers and around 13,500 North Africans who had arrived in metropolitan France before the war were repatriated after the defeat of May-June 1940 and the Armistice which established the conditions of German military occupation, and which divided France into two main zones (Smith 2013; Cadiot 2020; Mulonnière 2023a). This policy of "cleaning up the labor market," in the words of André Ségalat, the head of the SMOI, led to the expulsion from the metropolitan territory of most North Africans receiving unemployment benefits.[31] In this context, Alexandre Parodi, the Director General of the Ministry of Labor, set up a "repatriation bonus," as well as a flat-rate allowance intended to reimburse the social security contributions of workers sent back to Morocco.[32]

In 1941, the economic recovery and the structural labor shortage in the southern zone, governed by the Vichy regime, led the French administration to review its policy towards North African workers. By November 1942, when the Allies landed in North Africa, some 7,700 Algerian workers were recruited for the factories of this zone under a controlled migration regime that tied them closely to their employers. Officers from the *Bureau de la main-d'oeuvre nord-africaine* (North African labor offices) ensured the protection of those workers by visiting and inspecting factories and construction sites (Mulonnière 2023b). They acted to monitor and, depending on the case, redirect people towards employment or provoke disciplinary measures for any North Africans who appeared to be in an "irregular situation": a term used to describe any subject or *protégé* who moved around the territory, or had a job outside the reach of the employment services[33] (Smith 2013; Cadiot 2020). The aim

[30] Archives du Ministère des affaires étrangères (MAE), La Courneuve, 64CPCOM/20, Deliberation of the First Section of the CSDN Study Group, 7 July 1926; SHD 3H233, Draft memorandum from Charles Noguès to the Minister of Foreign Affairs, 8 October 1938.

[31] MAE 6GMII/66, minutes of the meeting of 7 September 1940, 12 September 1940.

[32] MAE 6GMII/66, The Director General of Labour and Manpower to the Minister of Foreign Affairs, 18 July 1940; The Minister of State for Finance to the Minister of State for Labour, 21 July 1941.

[33] AN, 19860271/1, circular from the Department of the Territorial Police and Foreigners, 13 January 1942.

was to prevent workers from crossing into the northern zone, which was controlled by the German administration. At the time, in fact, the German administration was recruiting on a massive scale and offering better wages.

In 1942, internal debate over the extension of the family allowance system was revived when the governor of Algeria created his own regime of family allowance for children "resident in France or Algeria" of industrial and commercial employees working in Algeria, thus breaking with the principle of territoriality in the granting of family benefits (Cantier 2002). This raised the urgent question of how to harmonize it with the system in place in mainland France. Against this backdrop, a large number of grievances arose from employees who felt they had been wronged. On 1 July 1942, Arezki D., an Algerian worker in an electro-chemical factory in Ugine, near Grenoble, wrote a letter to Hubert Lagardelle, the Minister of Labor, pointing out that "French subjects of the Empire" were worse off than foreigners when it came to family benefits:

> In the factory where I work, I see workers of various nationalities: Italians, Poles, Austrians, etc.... receiving benefits, and I think it's unfair that my Algerian comrades and I, French subjects of the Empire, subject to the military and civil obligations of our fellow citizens, don't receive the benefits that would allow us to bring up our children, who are French like us, with dignity.[34]

More surprisingly, and more significantly, his boss showed his solidarity by sending a letter to the Prefect of Haute-Savoie in which he denounced a situation he "considered abnormal," as the recent introduction of family allowances in Algeria was helping to reinforce the feeling of injustice felt by recently recruited Algerians:

> [...] these workers came to France on the strength of a higher hourly wage than they currently receive in Algeria, but [...] it should be borne in mind that when they work in one of the three departments of the General Government, they receive family allowances, so that for married men the total monthly wage they receive here is lower than what they would receive at home.[35]

The moment seemed right to grant family allowances to Algerians: on the one hand, to meet the expectations of a large segment of the working class; on the other hand, to make the southern zone more attractive and prevent North Africans from leaving for the German occupier's worksites, where the granting of allowances was not linked to the children's place of residence.[36] Sensitive to arguments about the uncontrollable demographic growth of Algerians in

[34] AN F22/1516, Letter from Arezki D. to the Minister of Labour, 1 July 1942.

[35] AN F22/1516, Letter from the director of the Giffre factories to the Prefect of Haute-Savoie, 1 July 1942.

[36] MAE 6GMII/66, Minutes of the meeting held on 3 September 1942 and note from the Vice-President of the Council "on indigenous North Africans staying in France" (unsigned), 22 February 1942.

case of allowances calculated on the basis of metropolitan rates, the Minister of Labor advocated for allowing benefits on the basis of the children's place of residence, a principle that was finally established by the law of 28 September 1942 (Mulonnière 2023b).[37] In October 1943, a circular extended this measure to the *protégés*. However, Vichy's desire to extend social protection to North African workers was reflected in other measures, such as the creation of a series of special benefits that Algerians could claim (loans, access to refugee assistance, clothing vouchers, assistance with accommodation, etc.).[38]

5. After the Second World War: The Affirmation of a Fragmented Social Citizenship during Decolonization

The end of the Second World War brought a new imperial relationship (Cooper 2014; Shepard 2006). Between 1944 and 1947, France formally recognized the citizenship of people henceforth known as the French Muslims of Algeria (FMA), based on the principle of their equality with other nationals. The FMA gained political rights, including the right of free movement between the two shores of the Mediterranean, despite the tacit conviction among some members of the French government that Algerians were "undesirable" and "unassimilable" (Rosental 2003). The emergence of these new rights and the consequent political impossibility of restricting the migration of FMAs led the Ministry of Labor to try – unsuccessfully – to channel it by encouraging the signing of employment contracts before departure, combined with a policy of priority placement for FMAs on the labor market (Spire 2005a; Mulonnière 2023a). This freedom of movement was called into question in 1956, when a new regulation made it compulsory for anyone travelling between the French metropolis and Algeria (or vice versa) to carry a new identity card, designed specifically to monitor Algerians and limit their movements in the context of the war of independence (Spire 2003). In 1957, although France ensured that Algeria was named in the Treaty of Rome, the Six members of the European Economic Community (EEC), partly in order not to create competition for Italian workers, decided that the issue of freedom of movement for Algerians should be postponed (Brown 2023). On the other hand, in a contradictory way, the rules of the EEC considered Algerians to be

[37] AN F22/1516, Letter from the Secretary of State for Labour to the Secretary of State for the Interior, 20 March 1942.

[38] MAE 6GMII/113, Circular from the Ministry of Foreign Affairs dated 24 February 1943, quoted in the letter from the Rhône Prefect to the Head of Government, Minister of State for Foreign Affairs, 5 February 1943.

"French nationals" and therefore, in theory, provided that the social security rules of each member state should apply to them as such.[39]

The rules for entry and residence in France for North Africans still varied according to the status of the territories from which they came. Moroccan and Tunisian nationals, who were not citizens of the French Union, were still subject to the provisions of the 1938 decree: they still had to carry a specific identity card delivered after having shown a work contract signed by Ministry of Labor officials and they were required to have a medical certificate before leaving their own countries. As a result, the officials responsible for monitoring Moroccan emigration to mainland France believed that around two out of every three workers continued to enter or stay in France illegally, using a passport issued by the Algerian or Tunisian authorities or a forged Algerian identity card, and taking steps to be regularized later by the prefectures.[40] Nevertheless, the status of the *protégés* remained relatively privileged in terms of access to the labor market because, from 1950, the "protected card" became valid for 10 years.

The management system of Moroccan and Tunisian workers was based on the *Office national d'immigration* (ONI), a state labor agency which reproduced colonial practices of racialized workforce management, where racial categories structured a differentiated set of career paths and compensation schemes for occupational risks. From 1954 until the 1980s, for example, several thousand Moroccan workers were recruited on the spot in Morocco (particularly in the Soussi region) for work in the coal mines of northern France, as part of a gradual closure of production sites that relied on a temporary and precarious foreign workforce (Perdoncin 2021). As for the interwar period, North-African workers – whether Moroccan, Tunisian, or Algerian – were assigned to the most back-breaking and least-skilled jobs (particularly at the bottom of the mines), according to a logic of racial segmentation that can also be found in other sectors (automotive industry, intensive agriculture, building industry, etc.) (Pitti 2005, 2025; Decosse 2011; Jounin 2009; Gay 2021).

The mobility practices of these workers, many of whom were accustomed to returning to North Africa for holidays or for recovering, were in contradiction with the principle of territoriality that structured most social benefits in France. The sickness benefits (*prestations maladie*) provided after 1945, for example, were not paid in Algeria. Faced with this injustice, some agents in the social offices responsible for the North African workers sometimes used the leeway they had to maintain a form of assistance to those workers. One of the officials at the Paris social control office (*bureau du contrôle social nord-africain*) put it this way:

[39] Council Regulation No. 3 on Social Security for Migrant Workers, 1957 (*Official Journal of the European Communities*, No. 30 of 16.12.1958, p. 561/58; entered into force on 1 October 1958).

[40] AN 20000287/98, Report of Pierre Devillars, "L'immigration marocaine en France. Compte-rendu de mission à la Direction des Offices du Maroc. Juillet 1948-octobre 1951," p. 15.

> [...] As the Order of 19/10/45 did not apply to Algerian nationals once they had left mainland France, I had to safeguard the legitimate interests of the French Muslims who were the victims of this situation. Consequently, each time I was asked to repatriate a worker who was ill or unable to work regularly to Algeria, I did my utmost, following the end of a 6-month "sickness benefit," or a current "long illness," to ask the person concerned to benefit from the "invalidity" pension, which is the only one applicable in Algeria to former workers in Metropolitan France. I obtained satisfaction in more than 80% of cases.[41]

At the same time, the Algerian social security system, approved in June 1949, was more restrictive than that of metropolitan France, and the two systems were not initially coordinated (Spire 2003; Mulonnière 2023b). For example, long-term sickness benefits existing in the metropole were not introduced in Algeria until 1952. Consequently, Algerian patients often preferred, in order to maintain their benefits, "to live either in a sanatorium or a hospital in Metropolitan France, or in a cheap hotel where they will end up ruining their health."[42]

Algerians whose families resided in Algeria, remained subject to the Algerian regime, in which family allowances were three times lower than in France for the same contribution (*cotisation*) level (Math 1998; Spire 2003). According to some immigration experts at the time, this difference was one of the reasons why some women and families moved to mainland France to join their spouses (Cohen 2020). From then on, the difference between the contributions deducted and the benefits received was used to finance the *Fonds d'action sanitaire et sociale* (Health and Social Action Fund), which was intended to improve the housing of North Africans in mainland France and which became the *Fonds d'action sociale* (FAS) in 1958 (Math 1998). The practice of paying family allowances at a lower rate to families remaining in Algeria, became an international practice in 1956. In July of that year, an exchange of letters between France and Belgium, which took place in a context of increasing internationalization of social rights at the European level (Fertikh 2020), extended very similar provisions to Algerian workers employed in Belgium and maintaining their families in Algeria.

Despite growing political investment and interest, social services specializing in the care of North Africans were a neglected part of the welfare state until the mid-1950s. The supply of staff on rounds or at reception counters, able to talk to Arabic or Berber-speaking users, was extremely rare. For example, in 1955, there was a specialized social service in only two regional family allowance offices.[43] State investment in specific social measures increased

[41] AN 19860271/15, Report on social control activities for 1949, 10 July 1950.

[42] "Nord-Africains et législation sociale," *Cahiers nord-africains*, no. 22-23, Études sociales nord-africaines, Paris, avril-mai 1952, p. 61.

[43] AN 19830235, «Les travailleurs nord-africains et la Sécurité sociale», report by general controllers Pivot and Pavard, 1955.

during the Algerian war, particularly with the creation of the *Société nationale de construction pour les travailleurs algériens* (SONACOTRAL), a body set up to build social housing for Algerian workers and their families in order to counter the influence of the independentist-inspired party Front de libération nationale (FLN) toward the Algerian population in France (Hmed 2006; Bernardot 2008; Cohen 2020). One of SONACOTRAL's main aims, for example, was to dismantle shanty towns and rehouse Algerian workers and their families. At the same time, the Constantine Plan provided for increased employment of Algerians both in Algeria and in metropolitan France (Lyons 2013).

Although they were supposed to be covered by social security if they worked in mainland France, like other foreigners, the lack of a reciprocity agreement between the protectorates and France still excluded the *protégés* from part of French social legislation: they suffer a great loss of rights when they left France to return to their country (Mulonnière 2023b). The *protégés* were deprived of some family benefits granted to Algerians whose family lived in metropolitan France, such as maternity allowances (*allocation maternité*) except when the child is born French (i.e., when the mother is French, in most of the cases). This was also the case of allowances not based on salary contributions but on taxes, such as the *allocation aux vieux travailleurs salariés* intended for elderly people who had no means of support. The representatives of the Moroccan General Residence felt that it should only be applied in metropolitan France. In fact, they feared that these benefits would lead to the emergence of "a demand movement" aimed at extending the social protection system to Morocco. At that time, it was restricted, especially for the natives, partly based on religious charity, financed and supervised from afar by the General Residence (Blonz-Colombo 2021; Perrier 2022).[44] At the same time, the Ministry of Foreign Affairs feared that extending social protection to Moroccans would be tantamount to creating an "expatriation bonus."[45]

With the independence of Tunisia and Morocco in 1956, the conditions of movement and access to the labor market in metropolitan France for former *protégés* evolved in accordance with the bilateral agreements stipulated with France. After a brief period of freedom of movement, which ended for Tunisia in 1958 (Bruno 2010) and for Morocco in 1959, the French-resident nationals of both countries found themselves with the less-advantageous status of ordinary foreigners. With the aim of "avoiding a massive and disorderly influx"[46] and obtaining guarantees for its nationals still living in Morocco and Tunisia, the French government negotiated labor agreements that were

[44] MAE 24QO/639, the Resident General Commissioner of the French Republic in Morocco to the Minister of Foreign Affairs, 8 September 1953.

[45] MAE 24QO637, Letter from the Minister of Foreign Affairs to the Resident General of France in Rabat, 27 June 1946.

[46] MAE 24QO/1015, Note from the Morocco Sub-Directorate to the Minister of Foreign Affairs, 7 June 1960.

finally concluded in 1963.[47] In organizing the recruitment, selection and deployment of workers, it stipulated that migrants from Morocco and Tunisia, like all foreign workers, must receive "the same treatment" as French workers in terms of working conditions, hygiene, and housing, as well as paid holidays, unemployment benefits, and medical care.

With regard to Franco-Algerian relations after Algerian independence, these questions did not arise with the same strength and forms. The Evian agreements of March 1962, which established a privileged relationship between the two countries, guaranteed that Algerians living in France "will have the same rights as French nationals, except for political rights." While introducing a five-year period during which Algerians, newly became foreigners, could acquire French nationality, it extended the system of free movement between the two countries, leading to a large wave of migration (almost 120,000 new Algerian residents between 1962 and 1964). However, the common desire of the two governments to limit and control the Algerian presence in metropolitan France led to the labor agreements of April 1964, which inaugurated a new period of controlled and selected immigration for workers with quotas (12,000 people per year)[48] and a clause facilitating the repatriation of Algerians without work or resources (Spire 2005b; Mollard 2024). The 1968 agreement then provided for the introduction of 35,000 workers per year for three years, and the creation of a five- or ten-year residence certificate, equivalent to the residence permits issued to other foreigners.

After Algerian independence, the question of the payment of the various benefits became a major diplomatic issue and a source of remaining tension between France and Algeria. During the negotiations to draw up a social security agreement, driven by the French authorities, the French delegation's aim was to "reduce" the "advantages [...] granted to Algeria under the old rules"[49] and, as for the former *protégés*, to bring them into line with the status of ordinary foreigners.

In continuity with a decision taken in 1963, and despite the guarantees of the Evian Accords, an agreement reached on 19 January 1965 made Algerian women living in France ineligible for a French maternity allowance, in a clear affirmation of the exclusively French nature of this type of natalist benefit and the eugenistic desire to control Algerian demography in France (Lyons 2013; Franklin 2023; Byrnes 2023). The will to limit the Algerian presence in France could also be seen in the authorities' curbs on family reunification in the coming years, which impacted Algerians more than they impacted Moroccans and Tunisians (Cohen 2017, 2020).

[47] Franco-Moroccan Convention of 1 June 1963; Franco-Tunisian Convention of 9 August 1963.
[48] In fact, there were more than 20,000 entries between 1964 and 1968.
[49] MAE, 29QO/91, Note by the Deputy Head of the General Affairs Department for the Minister for Foreign Affairs, 2 February 1965.

The agreement of 19 January 1965 also shortened the period during which Algerian workers returning home to Algeria could receive paid medical treatment and reduced the amount it reimbursed for the health expenses of workers' families living in Algeria. Under the reform, family allowances for children living in Algeria were to be reimbursed by France to Algerian pension funds at a flat rate of 30 *francs* per child per month, up to a maximum of four children, whereas previously they had been calculated at Algerian rates and based on the actual number of children. The aim was obviously to reduce the social cost of the Algerian presence in France, in a context in which family allowances were by far the largest social transfer to Algeria (more than 50 million francs in 1962, far more than the 13 million represented by work accident benefits).

On the other hand, the children of former protected workers finally gained access to family allowances under the terms of the Franco-Tunisian and Franco-Moroccan social security conventions of 1965, which predicted lower payments than if the workers' families had lived in France.[50] These conventions also guaranteed access to all the social security schemes of the host country for persons working in one or other of the two parties and clarified conditions for the aggregation and the transfer of benefits.

Recent research has shown that this extension of the rights of ex-protected workers, who were recruited in large numbers in the 1960s and 1970s, was accompanied by the development of discriminatory practices on the part of employers, which consisted in recruiting on a contractual basis in professions that were in principle regulated by a status associated with a specific social security scheme, such as miners or railway workers (Rosental and Devinck 2007; Perdoncin 2018; Zevounou 2023).

6. Conclusion

Governance of the mobility of colonial workers, in this case North Africans, between the First World War and the 1960s, was part of an imperial logic of labor and social rights management which, in the end, contributed to blurring the boundaries between the "national" and the "foreign" (Spire 2003, 2005a). The study of access to the welfare state during this period shows the existence of situations of legal discrimination, including discrimination resulting from policies and practices that differentiate between colonial and metropolitan or European workers, and also between categories of colonial workers. As a result of the distortion between legal categories and administrative practices, this dynamic of exclusion/inclusion made North African

[50] AN 19950493/4, Minutes of the meeting of the joint commission held in Rabat on 31 May and 1 June 1973.

workers undesirable from the point of view of their social and political integration in France, but not their market integration.

The management of the mobility of tens of thousands of colonial workers, who were seen by French authorities as dangerous but essential to the economy during the First World War (Dornel 2025), led to the emergence of access to social rights as a new public issue. For reasons of both economic interest and health security, the Ministries of War and the Colonies considered it was necessary to provide at least some basic form of protection for supervised workers coming from the colonial empire as part of wartime mobilization, and to adapt their status to the situation in metropolitan France, which led to the granting of rights that did not yet exist in North Africa. This protection was subject to various forms of mobility control. In the context of one of the first massive immigration movements within the French colonial empire, having a contract was the first condition for access to social rights and being able to move around legally. But the employment contract did not guarantee freedom of movement or full entitlement to social benefits.

The desirability of these workers depended on the convergence between political, economic, social, and moral concerns. So, periods when there is a great need for labor are also when rights are extended, and a social action is developed. However, the degree of protection of these populations has changed over time, following a trajectory that is not necessarily proportional to their level of desirability. In fact, Moroccan workers, more appreciated by employers and officials, always had fewer rights than Algerians, and the reforms introduced to widen their access to social benefits did not achieve harmonization of conditions. By contrast, Algerians' rights to social protection were strengthened during the *Libération*, even though 1945–1946 was one of the periods when their undesirability was most strongly asserted by the French administration and government. And the reinforcement of social initiatives in favor of the Algerian population reached its peak at the heart of the Algerian war, at a time when "French Muslims" had never been viewed with such mistrust by police institutions.

The independence of former colonial countries, and the resulting bilateralization of migration issues, changed the way social rights were defined in the late 1950s and 1960s. When the North African countries gained independence, the desire to preserve French nationals in North Africa led the French government to negotiate social security agreements with the new independent states. These agreements established equal treatment under the national laws of each country: the same social rights for their former French Muslims of Algeria and *protégés* and for nationals of former colonized territories working and living in France. This equality – relative, since certain rights remained excluded (such as maternity benefits) – led to a tangible increase in the rights of Moroccans and Tunisians in France compared to the colonial period, but a reduction in the rights of Algerians, with all North Africans

transitioning to the status of foreigners. While Algerians still enjoyed a more advantageous status than other foreigners in terms of the right to reside in mainland France, they were subject to discriminatory administrative procedures.

In the field of social protection, the social citizenship of North African workers thus appeared particularly flexible and fragmented. It fluctuated in relation to the evolution of geopolitical issues, the legal status of migrant workers, their mobility practices, and both political and administrative struggles over the definition of the perimeter of the welfare state. Maintained in a largely unfavorable benefit regime, these workers were deprived of certain rights in relation to French and even foreign workers such as the workers belonging to the EEC (like Italians) after the Second World War. While the principle of the free movement of workers was established as one of the cornerstones of European market and social integration during the 1950s, particularly in order to facilitate the industrial restructuring of the countries belonging to the European Coal and Steel Community (ECSC), post-colonial workers, in this case North Africans, were excluded from it. More specifically, they represented an adjustment variable for both national and European labor markets while at the same time enabling European workers to benefit from rights, including the right to the freedom of movement.

As demonstrated by the cyclical controversy over the residence requirement for family allowances, the principle of territoriality takes priority over the principle of personalized (and transnational) social rights. However, under pressure from the mobility of these populations, the principle of territoriality had to be constantly adjusted in the form of derogations in the granting of social benefits, which nevertheless remained limited compared with the situation of the *métropolitains* (metropolitans in French, Italian). French authorities have been confronted with the question of the continuity of rights acquired in metropolitan France once the insured persons return to North Africa. On the other hand, when an equivalent assurance scheme did not exist in the North African territories, these principles constituted barriers that prevented or compromised the monitoring of pensions and, a fortiori, their maintenance at an equal level.

The continuous differentiation and fragmentation of social benefits concerning North African workers thus reproduced a colonial social security order that aimed to impose hierarchical redistribution measures according to a set of geopolitical, economic, and racial categories.

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The Missing Link. International Law, Administrative Power, and European Social Rights

Karim Fertikh *

Abstract: *»Der Missing Link: Internationales Recht, administrative Macht und europäische soziale Rechte«.* Social security for migrant workers was the first truly integrated European policy. The form that this "coordination" has taken since 1958 has proved remarkably stable right up to the present day. Migrant (nowadays "mobile") workers within the territory of the European Union (EU) have benefited from "deterritorialized" and "denationalized" rights in a profound break with the national and territorial logic of social states. This article shows that the implementation of this policy was the work of a small group of national civil servants. These officials imported elements from treaties and agreements negotiated in other international organizations since 1945 into the architecture of the EU. Constituted as an "administrative commission," their group acquired a transnational administrative power. They thus created one of the first international redistribution mechanisms, a sort of social state beyond borders. The article is based on the national archives of several of the founding member states of the EU (here I am drawing in particular on the French national and diplomatic archives), as well as the archives of the International Labour Organisation, the EU, and the British National Archive. The article uses scientific articles written by the civil servants it deals with and by their contemporaries as well.

Keywords: International law, bureaucracy, social security, migration, social state.

1. Introduction[1]

Could it be that the European Union (EU) has created the first transnational welfare state after all? On October 17th, 1971, Adrianus Van de Ven wrote a letter to the president of the Administrative Commission for the Social

* Karim Fertikh, Institut Universitaire de France University of Strasbourg, 7, rue de l'Écarlate, F-67082 Strasbourg, France; karim.fertikh@unistra.fr. ORCID iD: 0009-0001-1365-9109.

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Security of Migrant Workers (Administrative Commission).[2] The head of Social Security at the Dutch Ministry for Labor had been involved since the 1950s in international social security affairs and in the making of the European regulations on migrant workers in Europe. In the letter, he thanked the members of the Administrative Commission for their telegram wishing him a prompt recovery from his stroke. The telegram made him feel "*really, really good*." He added that, should his health allow it (as he hoped), he would travel to Brussels to "*say his farewells*" to his European colleagues in person. He felt that simply sending in a letter of resignation was not enough, as he shared with them "*the great privilege of having cooperated in the social reconstruction of Europe since the inception of the Commission*," which gave him "*great pleasure*" and left him with "the *most agreeable memories*." He spoke of their common mission to rebuild Europe, and of friends he had had relations with for decades, rather than of colleagues. This group of persons did indeed cooperate in an effort that turned social security into an international legal enterprise: this process is precisely what this paper sets out to examine.

The literature portrays the EU as a neo-liberal construct, with social policies seen as mere market correctives. Yet some social policies were among the earliest to be integrated into European policy. This is particularly true of social protection for migrant workers, which preceded trade liberalization by several years. The first regulation related to the social security of migrant workers came into force six years prior to the formalization of freedom of movement of workers in 1964. In 1958, European Economic Community (EEC) Regulations nos. 3 and 4 established a coordinated European scheme for the social security of migrant workers. By 1961, this applied to 600,000 migrant workers, or 1.5 million including family members, in the six EEC countries[3] (respectively 750,000 or 2 million individuals a year later[4]). This coordination has since protected the social security rights of migrant workers, now called "mobile workers," within the Community. In 1959, looking at the prospects of the nascent EEC, Otto Kahn-Freund regarded these regulations as "*the most significant achievement of the Community in the field of social policy*"(Kahn-Freund 1960, 311). To him, these regulations were "*not only the most important step taken by the Community in the fields of labor law and social security, but by far its most significant achievement in legislation altogether*"(Kahn-Freund 1960, 321). As a matter of fact, the "common market" was progressively established in the 1960s, and the freedom of movement of workers as well. One of the founding figures of German labor law, Kahn-Freund (1900–

[2] Institut für Zeitgeschichte (IfZ), Kurt Jantz, ED 431/25-5: letter from Van de Ven to Kurt Jantz, 17 October 1971.

[3] Historical Archive of the European Union (HAEU), BAC21/1966_119: letter from Kurt Jantz to the EEC Council, 22 December 1961. (Compared to 13.2 million mobile citizens for the EU-27 in 2019).

[4] Archives nationales de France (ANF), 19800 447/5: report of the Administrative Commission.

1979), was at the time a professor at the London School of Economics, and a prominent labor and social security law specialist – serving as president of the International Association for Labor Law and Social Security from 1960 to 1966. He saw the European regulations on social security as a "milestone" in international social legislation and many of his colleagues would consider it a revolution in international law.

Today, it is difficult to grasp the groundbreaking impact that these regulations had at the time. They constituted an unprecedented departure from national and local approaches to social rights – even though these regulations represented the result of a decade of attempts and efforts, and were also the outcome of a history that mainly took place outside the institutions of the EEC. These regulations (whose continuity has never been interrupted) have broken down the national and territorial framework of social protection. They have granted social security rights to migrant workers from EEC countries regardless of their nationality. These rights (to health insurance, pension, and family allowances) have since been attached to individuals and their families in general rather than only to nationals. Italian workers in France could for instance claim family allowances for their children in Italy and retire there with a pension that reflected entitlements accumulated as workers in France and in other EEC countries.

This deterritorialization (or "personalization") of social security (Fertikh 2020) law was a legal "revolution" in a sociological sense (Bourdieu 2013): it redrew the boundaries of welfare (Ferrera 2005; Jureit and Tietze 2015) to an extent that prominent scholars such as Otto Kahn-Freund considered unprecedented. The head of the Social Security Division at the General Directorate for Social Affairs, the Frenchman Jean Ribas, was no less enthusiastic in his assessment that these European regulations heralded a historical break from the "fundamental principle" of national territoriality (Ribas 1963, 410-1). As Otto Kahn-Freund states, no other domain of law, especially one so closely associated with the national level, has experienced such a swift (and lasting) change. This article investigates the sociological foundations of this international law on social security. How can socio-historical research explain the rapid and for a long time uncontroversial invention of social security for migrant workers? Where (and by whom) is international law produced? This article is an attempt to shed light on the making of this legal revolution and its lasting effects on the international legal order.

In the field of social security, which is probably the most integrated domain in European social policy, the naturalization of the European rules contributes to blurring the perception of its importance in European integration, as evidenced by the endless debates over social Europe. To give just an idea of the importance of social security as an integrative force, the budget of the EU would increase considerably if social security transfers between EU countries were taken into account. Granting access to social security to migrant

workers fell under the freedom of movement of workers (Art. 51 Treaty of Rome) but a group of civil servants prepared this internationalization of social security rights long before the EEC was even an idea, and they put in place mechanisms that have never been altered since the 1950s.

Few studies have underlined the role of national administrative elites in the European integration process (Soysal 1994). European studies scholars have rather documented the uncontroversial importance of the national interests of Member States (Comte 2017; Comte 2025, in this issue), of the Commission, and of the European Court of Justice (genuinely European institutional forces) in the making of the "post-national" social state (Ferrera 2005; Jureit and Tietze 2018; Tietze 2025, in this issue). On freedom of movement, the literature often points out the role of scholars (Koskenniemi 2010; Rygiel 2021).

This article will underline the role of national bureaucracies in the integration process. It shows that governmental officials from Labor ministries achieved what I propose to call, after Max Weber, a "concession of law" (Weber 2013, 135). When Weber described the process of the formation of the State and its fight for the monopoly over lawmaking, he insisted on medieval bodies endowed with the ability to exert a "private," autonomous law. These bodies had, Weber wrote, a "concession" in lawmaking, acting as autonomous lawmakers. In the 20th century, national bureaucrats used the internationalization of law to share their national monopolies over social security rules with other national bureaucracies and to invent sets of international rules they had control over. Social security officials were among them. Thanks to their bureaucratic virtuosity and to the interdependencies between the social security departments of various national labor ministries, these officials got the upper hand in the making of international and European rules of social security. These bureaucrats are forgotten actors of the European policy process: "member states" are "represented by a myriad of national officials" in a functionally and sectorally divided EEC (Lindseth 2010, 132). As part of the "patchwork" of policymaking processes (Crespy 2022), social security officials enjoyed a supranational technocratic "concession," a jurisdiction (Abbott 1988) over supranational rules. Because of the role of diverse national officials in European lawmaking, European integration (and neoliberal trends in world trade) cannot be adequately analyzed if different facets of liberalization (goods, services, capitals, persons) are thought of as a homogeneous whole, expressing a one-size-fits-all (neoliberal) ideology. In the field of social security, "other" globalists (than the neoliberal globalists Quinn Slobodian studied [2018]) were at work, for instance in competition or agricultural policy.

Drawing on a wide array of sources, both from archives and publications, I will retrace the making and implementation of the European social security regulations, with a focus on the Administrative Commission for the Social Security of Migrant Workers created in 1958 to implement a new international

(social) order. This commission was an "organ" of the EEC composed of governmental officials referred to as "experts," supported by the European Commission and featuring an International Labour Organization (ILO). The experts meet several times a year; three to six employees handled the daily activities of the Administrative Commission in the 1960s. The Administrative Commission has since interpreted European regulations, found ways to implement them and concluded the necessary financial agreements. It is by far the main player in the field. This paper stresses the bureaucratic power of this commission and sheds light on how and why national bureaucracies have shaped a supranational legal order in the field of social policies. Focusing on the officials, this article evidences the social rationales underlying the formal and technical debates and follows the making of an international doctrine in social security step by step.

This article begins by showing the emergence of international social security law after 1945, and highlights the central role played by national civil servants in shaping European law in this area. The article presents European social security law as a "do-it-yourself kit" cobbled together from other treaties that predated the existence of the EEC (section 2). It was on this law and the body derived from it that these national civil servants grounded their international bureaucratic power, as the article will show in its second part (section 3). The third part of the article highlights the way in which these national civil servants forged legal narratives, *fictio juris*, designed to rationalize their practices and the edifice of Community law that they brought into existence (section 4).

2. The Do-It-Yourself Kit of European Law: The Non-EEC Origins of EEC-Law

Why did the EEC coordination of social security, embodied in EEC regulations 3 and 4, become one the earliest pieces of EEC legislation, being in force in 1958 already? "Social security" was in the post-WWII period a modernization project undertaken by groups of "experts" – people in high-level positions in various national and international administrations. The EEC inherited this modernity.

A group of ministerial officials, made of the heads of national social security departments in West European countries, stabilized a European conception of social security for migrant workers. As national officials, they served as "experts" in various international organizations with a focus on social affairs or labor mobility, such as the ILO, the United Nations, the Organization of the Treaty of Brussels, the Council of Europe and the European Coal and Steel Community (ECSC). Their focus was not specifically European. Rather, they

used the EEC as an opportunity to formalize an agreement they had envisioned for a long time. This European law started as a do-it-yourself kit, made of bits and pieces of preexisting agreements.

After WWII and in the wake of the Declaration of Philadelphia by the ILO (Supiot 2010), these players had a strong sense that they were embarking on a path-breaking journey. In 1961, Jean-Jacques Dupeyroux, one of the founding fathers of French social law as an academic discipline, acknowledged the growing international importance of social security:

> Social security is as much on the international agenda as it is in national legislation. From the Atlantic Charter to the draft European Social Charter, from the Declaration of Philadelphia to the Treaty of Rome, an extraordinary flowering of Declarations and Treaties has highlighted the fight for the freedom from want and for social security. (Dupeyroux 1960, 365)

These players thought they were heralding a new modernity in the world order. Pierre Laroque (1907–1997), who is considered as the father of French social security, was one of these pioneers. In various organizations where he represented the French government, whose department for social security he led, Laroque defended social security as an ideal he was eager to "internationalize": both to internationally expand and to set international rules upon which nations could agree. These rules were both "standards" defining what social security should entail and coordination mechanisms designed to cover the migrant workers who were largely excluded from interwar social insurance systems. In 1947, Laroque was invited to give the inaugural speech at the founding meeting of the International Social Security Association (ISSA), in front of an audience of social insurance company executives and senior bureaucrats from all over the world. He called for extending social security, a brand-new word that "no one talked about fifteen years ago," to all of humanity, and especially colonized people. The "new world" required joint efforts to ensure social progress, and he urged his colleagues to embrace their role as "architects of hope."[5] He was not the only one to use such idealistic language. The president of the Italian national workers accident and health insurance fund and newly elected president of the ISSA, Renato Morelli (1905–1977), praised the UN Declaration of Human Rights' enshrinement of social security in Article 22, recalling that history had been described as the gradual conquest of liberty. The Declaration was "*the catalyst that will ensure its final triumph, and so is social security*," he added.

This idealism, typical of "technical internationalism" (Schot and Lagendijk 2008; Schipper and Schot 2011), was no mere figure of speech. In 1951, the British official T. C. Stephens prepared a report for the ISSA on the many bilateral social security agreements concluded after WWII. Stephens was a long-standing civil servant at the Ministry of Pensions and then at the

[5] *Actes de la conférence de l'Association internationale de sécurité sociale*, 4-9 novembre 1947, p. 358-9.

Department of Health and Social Security, where he still worked in the 1970s, entrusted in particular with international affairs. Addressed to fellow officials from other countries and representatives of social insurance institutions, his report is full of the idealism that he shared with other high-ranking officials. He attempted to provide an overall picture of the more than 150 bilateral agreements concluded worldwide, albeit mostly in Europe, from 1945 to 1952. Between 1955 and 1960, 98 agreements were concluded.[6]

These agreements were, Stephens wrote, "part of a general effort to remove the barriers which hamper the movement of men, of economic resources and of ideas. The importance of the agreements has, as a result, often been assessed rather in terms of their value as social and political symbols than of tangible benefits they afford to insured persons."[7] This did not prevent Stephens from insisting on the "universal admiration" commanded by the work of social security officials in patiently building up this network of agreements. The pattern of this network may appear as "a patchwork made up of many oddly assorted materials, somewhat loosely held together." But it "is gradually knitting up the social security schemes of Europe into an international system which will afford continuous protection to the population wherever their work may take them." The last words of his official report, then, are full of optimism and idealism:

> Reciprocity springs from the desire to remove barriers between nations but, in its turn, by providing opportunities for the cross fertilization of ideas and experience and by forcing legislators and administrators to look afresh at many of the principles which they have hitherto accepted as fundamental, it helps to create a more liberal conception of social security. The ultimate goal of social security for the human race as a whole may still seem a remote ideal, but no one can doubt that every new reciprocal agreement marks a further step toward the achievement of that ideal.[8]

At the 1947 ISSA conference, to concretize the "hope" of social progress, as quoted before, in the name of the French government, Laroque proposed to create a new "World Organization for Social Security." The French government used its position as a permanent member of the ILO's Administration Council to advocate for this new organization. In 1947, it issued a memorandum aimed at launching an interstate organization, which the ILO circumvented by setting up a "Committee of Social Security Experts" whose purpose was to rethink international legislation on social security as a whole. Under the presidency of the French experts, Laroque and his successor Jacques Doublet, this committee drafted in particular the new ILO Convention on the Minimum Standard of Social Security (1951) and the Convention on the Equality of Treatment between National and Foreign Workers (1961). The aim of the

[6] Bulletin de l'association internationale de la sécurité sociale, 1962, XV, 6-8, 237.
[7] British National Archive (Kew, BNA), PIN 34/122: report, 1951, 70.
[8] Ibid., 73.

committee, a "pioneer in the field of social security, in the modern sense of this term,[9]" was to propose the "draft for a general social security convention based on the modern approach" and to "switch to a new form of law," more general and adapted to "modern legislations." The idea of modernity and modernization of social security legislation was stressed.

The EEC happened in this context of "modernization" and universalization of social security. During their meetings in different arenas, the national officials consciously attempted to develop a cooperation project based on bilateral and multilateral agreements. In order to understand the swift development of the EEC Common Agricultural Policy (CAP), Kiran Patel and Johan Schot emphasize the importance of a joint understanding of its contours among the experts. This understanding was already expressed in a 1959 policy draft, soon to be called the "Bible," that helped policymakers to expand their prerogatives (Patel and Schot 2011). In the field of social security, by contrast, this understanding predated the EEC regulations themselves. Prior agreements expressed the objective of the expert group: ensuring a complete social security protection for migrant workers on the European continent. In the 1940s and 1950s, the national civil servants concluded dozens of agreements on the matter and developed multilateral agreements though which they formalized an international framework for social security.

They expanded the set of legal instruments used by the EEC and removed the territoriality and nationality principles as bases of social legislation. The 1950 agreement of the Central Commission for the Navigation on the Rhine established the first "*administrative commission*" whose role was pretty much the same as the EEC Administrative Commission's, and the 1951 multilateral agreement of the Organization of the Treaty of Brussels was the first attempt to ensure access to social security benefits for all migrant workers. It is worth noting that most of the negotiators of this agreement had taken part in talks on the EEC regulations and were members of the Administrative Commission of the Social Security of Migrant Workers: Francis Netter for France (seconding Pierre Laroque), Léon Watillon for Belgium, together with Jean Duquesne, the future EEC secretary general of the Administrative Commission, Adrianus van de Ven for the Netherlands, and Armand Kayser for Luxembourg. The 1958 regulations were the next step in their action, as the social security experts had worked since 1954 on an ECSC agreement on social security for migrant workers when they adapted it to the newly created EEC. There were no doubts as to the step-by-step progress envisioned by these industrious bureaucrats. For instance, Olivier Lambeaux, a specialist of social security, commented that the 1951 agreement on the social security of Rhine River boatmen "paved the way for the agreement which will create an ever-closer union between the member states of the ECSC though social ties whose

[9] Archive of the International Labour Organisation (ILO), SI/CSSE 1001-301: general report.

importance for the unification of Europe cannot be contested" (Lambeaux 1957, 518). In his chapter on the European social security regulations as a legal revolution, Otto Kahn-Freund underlines the continuous path that led to this achievement. He says that national officials met as an "informal group of experts" during the 1950s to prepare the international piece of legislation that came to be the European regulation. They "later transformed themselves into an official commission" (Kahn-Freund 1960, 322): the Administrative Commission for the Social Security of Migrant Workers, which this article will shortly scrutinize.

Indeed, the international efforts of these civil servants set the path for the European regulations themselves. These regulations are to be understood as an effort to "elaborate a modern social security law at the European level," as a note to the president of the ECSC president stated in 1961.[10] They made the new regulations from bits and pieces of the old agreements, reenacting some of the debates that were settled as to give a second chance to legal solutions that had not been adopted in the past – such as the debate over an international clearing house in charge of financial transfers between national organisms. The regulations integrated most of the principles of the old agreements – equality of treatment, transfer of benefits beyond borders, addition of the working time in other EEC countries for pension payments. The EEC was merely a convenient institution to implement an agreement designed to protect continental migrant workers in general. In fact, UK and Swiss representatives were invited to take part to the negotiations to ensure their smooth integration in the European mechanism. The EEC was not particularly significant to them: it was an organization among others that they used to achieve their professional goals.

That a group of officials was already prepared to internationalize social security explains why the European law could be prepared so rapidly. The regulations 3 and 4 provided these officials with what we might call international bureaucratic power.

3. A Supranational Bureaucratic Power

The European social legislation has proven amazingly resilient and has seldom been altered since 1958. This "path dependency" owes much to the social composition of the "expert" group that triggered the modernization process in the field of social security. These experts, officials from the national ministries for labor, built an international policy-making community and secured a monopoly over the international social security lawmaking process. The notion of "concession of law" – the idea crafted by Weber that some bodies could

[10] HAEU, BAC 1/1970_944: note to Paul Finet, 15 March 1961.

exercise an autonomous lawmaking power – sheds light on the fact that these officials pooled resources and invented an original type of international regulation that differed (and still differs) from standard European law. This concession of international law set the basis for "supranational delegation" of the policymaking process to an expert community.

The European (and international) law on social security as a whole resulted from the involvement of a small group of experts, who were all in charge of national social security bureaucracies. In 1959, the Administrative Commission was composed of 6 permanent members and 6 alternates, assisted by nearly 20 advisors, the EEC staff, and the ILO expert. Some of the national "experts" stayed at their posts for long periods, in some cases decades: Adrianus van de Ven was a long-standing high-ranking official at the Dutch Ministry for Health and Social affairs, having served as head of the Department for Health since 1936, and of the Department of International Affairs from 1949 to 1957. He had been a specialist of international social and health affairs since the late 1940s. He was a member of the Administrative Commission from its inception until the 1970s. The same goes for Kurt Jantz (1908–1984), the German representative, who had worked at the Ministry for Labor since the 1930s and left it in the 1970s and for Léon Watillon and Albert Delpérée, the Belgian representative and his alternate. In March 1977, Albert Delpérée retired from his post as Secretary General of Social Welfare. In a special issue of the *Revue belge de sécurité sociale* on his career, Léon Eli Troclet, one of the bigwigs of the Belgian Social State and a key figure of European integration, wrote: "The whispers have finally been confirmed: Albert Delpérée is set to leave the ministry! This seems impossible, attached as he is to his function, or rather: to his mission" (Troclet 1977, 167). In France, the Directors-General for Social Security stayed at their post each for almost a decade: Pierre Laroque (1945–1952), Jacques Doublet (1952–1960), Alain Barjot (1960–1967). When they left the French General Directorate for Social Security, they still were part of the small world of the social security, as civil servants, independent experts and professors. Jacques Doublet, for instance, was in the 1940s a member of the European Movement and prepared the Social Conference of Rome (1950) where he was in charge of questions of migration.[11] He left the ministry to occupy the first chair devoted to social security at the Conservatoire national des arts et métiers in Paris and was involved in the foundation of the European Institute for Social Security at the university of Leeuwen. In the office for international affairs, André Philbert (born 1924) had worked at the Ministry of Labor since 1945, and during the 1950s and 60s held many social security-related positions (at the Office for Foreign Affairs, in the Minister's cabinet, at the EEC Commission in 1960). Between 1965 and 1970, he was in a leading position at the Ministry's Department of International Relations

[11] HAEU, ME 518: French Executive Committee (1950).

and represented his government in all European affairs-related matters. Many of them were effectively "international experts," being members of many international arenas and groups (ILO expert groups, Council of Europe, ISSA, International society for Labour Law and Social Security, International Association for Social Policy, European Institute for Social Security, etc.) and these "governmental experts" were also the "independent experts" appointed by the Commission for all social security-related studies in the EEC.[12]

The same continuity can be observed for the ILO and the European civil servants, most of whom were former national civil servants. An alumnus of the *Ecole nationale d'administration* (ENA, the French university for senior civil servants), Jean Ribas (born in 1921) had long been the head of the Social Security at the General Directorate for Social Affairs (GD V). He began his career at the French Labor Ministry, as did other European civil servants who were advisors for their governments (among them, the Belgian Jean Duquesne, secretary general of the Administrative Commission, or the Frenchman Jean Dedieu) before they worked for the EEC. The ILO representative Guy Perrin sat on the bench of the Administrative Commission from 1959 to 1991. Born in 1926, Perrin is considered as one the architects of the European (and global) order of post-WWII social security. Perrin had a pristine academic record (*Ecole normale supérieure*, *Sciences Po*, ENA, *university of Lausanne*) and worked for the French Department of Social Security (1954–1957) before being appointed at the ILO's Social Security Division on the recommendation of his superior, Jacques Doublet. When he retired in 1988, the ILO and EEC kept relying on his "unique and distinguished expertise" on European social security for another three years.

The role of these "experts" was recognized as pathbreaking. As the Luxembourger socialist and trade unionist Jean Fohrmann (1904–1974) put it in a speech as a member of the ECSC High Authority in 1965:

> As members of this administrative commission, your work is an essential part of reducing the distance between us and the achievement of this goal. Future historians of European unification, in addition to the analysis of political movements and treaties, will have to take into account the part played by the administrative work, which was largely carried out in the shadow of public life.[13]

In 1960, the president of the ECSC High Authority Paul Finet underlined the "work of historical importance" of the Administrative Commission, "one of the most important steps on the way to Europe."[14]

[12] HAEU, BAC 237/1980: studies (GD V, 1960–1966).

[13] HAEU, BAC 1/1970_944: speech of Jean Fohrmann to the Administrative Commission, 21 December 1965.

[14] HAEU, BAC 1/1970_944: speech of Paul Finet to the members of the Administrative Commission, 22 June 1960.

For the first decades of the EEC, the Administrative Commission met on an almost monthly basis and developed a shared understanding of its prerogatives – by 1967, its various committees had met on 321 occasions.[15] This commission brought together specialists who had accumulated a specialized type of capital both in their national work and through their participation in international meetings. They invented new sets of rules, and the rationality of these rules made them complicated to grasp and manipulate for outsiders. While they resisted attempts to "communautarize" social security, the members of the Administrative Commission did not defend national but rather professional prerogatives. As most important players in this field, they triggered the Europeanization of social security.

The members of the Administrative Commission were, in a nutshell, an epistemic community (Haas 1992) of international lawmakers and interpreters of law who were interested in the development and rationalization of social security law. The Administrative Commission solemnly proclaimed its supranational character during one of its first meetings: its decisions would be, its members said, as binding as intergovernmental decisions in the European Council.[16] The EEC's legal service noted that the Council (composed of governments' representatives) had transferred its competences to the Administrative Commission.[17] In their opinion, its decisions superseded national regulations; this was reaffirmed by its members in their publications.

The role of the Administrative Commission in interpreting the regulations cannot be underestimated. Its members put in place a machinery that made it administratively and financially possible to connect independent social security schemes to transfer billions to pay foreign benefits (2 billion Belgian Francs in 1959,[18] 3 in 1962) at a time where the EEC's total budget was quite small. They imposed their own rationality on European law. In December 1959, the Commission's legal service clashed with the Administrative Commission over the definition of "migrant workers."[19] Article 51 of the EEC Treaty pertained to "migrant workers." In preparing these regulations, the national experts had already expanded this category to the families of these workers. In their first meetings, they went a step further: based on a strict legal rationality, they considered that workers temporary staying in an EEC country other than the one where they worked in should be treated on an equal footing with the "migrants" in the strict sense. To put things plainly, a German family on vacation in Italy should benefit from these regulations.

[15] Archive of the ILO, 98637, "Dix années d'activités de la commission administrative pour la sécurité sociale des travailleurs migrants", December 1968.
[16] HAEU, BAC 1/1962_0040: Meeting 1-2 July 1959.
[17] HAEU, BAC 1/1962_0040: Opinion of the legal service of the European Commission, 15 July 1959.
[18] HAEU, BAC 21/1966_111.
[19] HAEU, BAC 1/1962_0040: meeting 17-18 December 1959.

The participants argued that anything different would be "shocking" and contradict the all-important principle of equality of treatment.

Because the Administrative Commission was composed of government officials, its "autonomy" vis a vis the Member States was supported even by those most opposed to the idea of making the slightest compromise with the European Commission. The part they played in this legal enterprise relied on the power they drew from their mastery of technical knowledge in the international negotiations. After several meetings of the "experts" during the late 1950s, Jacques Doublet, the head of French social security, insisted that the 1958 agreement by the national experts had to be supported by the French Ministry of Foreign Affairs as it had proven "extremely difficult to reach."[20] Multiple notes in the Quai d'Orsay archives insist year after year on the diplomats' struggles to grasp the fine points of international social legislation, leaving the Ministry for Social Affairs and its representatives carte blanche in the domain. In 1974, when the experts negotiated new regulations, the chief of staff fed the Ministry of Foreign Affairs with comments and notes, which were met by the same disinterest by the diplomats who considered that the sole purpose of European negotiations on social security was to give a chance to Social Affairs representatives to air their thoughts:

> The main result of these meetings is to give [André] Philbert [the head of the international division of the French directorate for social security] the opportunity to think aloud. It is the only opportunity to do so for him.[21]

Any decision-making in the field was dependent on the experts, and the positions of the governments were the positions of the experts themselves.

The positions of "France" and of the other "member states" were the parochial doctrines of their departments of Social Security, not positions devised by laymen including ministers. On some occasions, when the Ministries of Foreign Affairs intervened on the topic, social security officials mitigated the consequences of their action in order not to jeopardize cooperation with their counterparts in other countries, or even protested against intolerable infringements. In other words, labor ministries developed an international policy of their own.

The national officials resisted infringements to their jurisdiction (domain of expertise) by other players than those from the Ministries of Foreign Affairs. These were not struggles over retaining a national competence: they defended an area of expertise on international law against a vast array of players, ranging from territorial agencies and competing national ministries to the Commission and the European Court of Justice. They defended the autonomy of their decision-making processes and thought of themselves as "craftsmen of a common task." Their independent work contributed to the making

[20] Archives diplomatiques de France (ADF), DE-CE 1945–1960, letter from Jacques Doublet to the Minister of Foreign Affairs, 8 September 1958.

[21] ADF, 42INVA799.

of a new world order: "without spectacular demonstrations, without public opinion even being aware of it, the solution of international social security problems represents a concrete contribution to the building of the international community." (Laroque 1952, 324)

On many occasions, the national bureaucratic leaders rebuked proposals by the European Commission to let other players intervene in their area of competence. Because they thought of their prerogatives as legislative, comparable to those of the Council (where the Governments met), the members of the Administrative Commission resisted allowing civil society (especially trade unionists) into their meetings. The "regulations" themselves were a symptom of this technocratic power. When the UK was preparing to join the EEC, a ministerial memo recalled in 1970 the history of Regulations no. 3 and 4 with an emphasis on this search for autonomy:

> It so happened that, before the EEC was established, the Coal and Steel Community had asked the ILO to prepare a multilateral convention on the social security of migrant workers. The commission [...] recommended regulations rather than a convention because a convention would have needed ratification by the Parliaments of the Member States.[22]

They finally accepted joint conferences where the international trade-union confederations were present to expose their views but left out of the decision-making meetings. The 1962 "European Social Security Parliament" prepared by the Commission was typical of this fierce defense of the jurisdiction of the Administrative Commission. Some members even saw the interventions of the European Court of Justice as a breach of their expert monopoly. Their expertise and the claimed technicality of their field must be understood as a performance designed to put all the other players at bay. In this respect, Kurt Jantz challenged the Court's rulings on the grounds that they did not grasp the complexity of the national social security systems or the "philosophy" that guided the European regulations themselves.[23] To him, the Court's decisions introduced irrational and arbitrary differences in the treatment of individuals. He argued that that there was a risk that the Court would jeopardize the whole European system and lead the States to retreat to their old territorial principles (given his position in the international law-making process, this sounded like a threat). These national bureaucratic leaders did not only perform a technical task but developed a specific "philosophy" to give meaning to what a European Commissioner named the "assistance machinery.[24]"

[22] BNA, PIN 34/282: memo (1970), "Social security implications of the treaty of Rome."

[23] IfZ: ED 431/19-10: "Die Rechtsprechung des Europäischen Gerichthofs zu Problemen der Sozialen Sicherheit" (16 July 1965).

[24] HAEU, BAC21/1966_138, Discourse of the Commissar Guiseppe Petrilli at the first session of the Economic and Social Committee of the EEC, February 1959.

4. The Human Factor in the Machinery: The Other Globalists

These players, along with other legal specialists of the field, developed what Pierre Bourdieu calls *fictio juris*, legal fictions (Bourdieu 2015) – that is: narratives rationalizing their newly acquired international power. For our contemporaries, these *fictiones juris* are difficult to fathom. Other strains of supranational law have emerged since; we struggle to make sense of the idea of that an international commission made of national civil servants functioned as an autonomous international law maker. Many now see the Administrative Commission as antiquated, the relic of an old legal tradition. Yet, for more than a decade, legal specialists saw it as an international law maker, that both defined and interpreted a new legal field. They developed narratives to frame this new conception of law embodied by the Administrative Commission.

First of all, the persons involved in the making of social security were convinced that they were paving the way to a European integration with a human dimension. They celebrated their achievements as important steps toward a European society. In 1959, Giuseppe Petrilli (1913–1999), the first Commissary of the General Directorate for Social Affairs, said that the European social security created a "machinery" that aimed at protecting the European worker as "citizen of a greater fatherland":

> The European worker, who is a citizen of a greater fatherland, will have the right to move freely among the Community's countries, to settle in any of them after securing a job and to take advantage of the instruments made available to workers by that country's social legislation. As a citizen moves, the full machinery that has been created to assist them will move along with them and protect them so that when they eventually he will retire, their entire working life will be reflected in their pension and serve as a constitute a tangible reminder of a wider solidarity.[25]

In short, to Petrilli, the European social security made "obsolete the particularly awkward notion of emigrant."

Most state representatives in the Administrative Commission helped give a meaning to their collective enterprise. They gained academic recognition for this work during or after their professional involvement in the Administrative Commission. Many of them secured academic positions after their time in the ministry in addition to giving lectures at the College de Bruges and at the French school for Administration (ENA). This is the case of the French Jacques Doublet, the German Kurt Jantz or the Belgian Albert Delpérée and Léon Watillon. Even before the EEC Treaty, they had written numerous articles and books on their activities in addition to taking part in international

[25] HAEU, BAC21/1966_138, Discourse of the Commissar Guiseppe Petrilli at the first session of the Economic and Social Committee of the EEC, February 1959.

negotiations and committees. These players developed a brand of "globalism" that contrasted with neoliberal globalism. They believed, as the ILO Declaration of Philadelphia put it, that "labour is not a commodity" (Delpérée 1956, 81). The international agreements they concluded established a "rule of law" at the international level. As they saw social security as a key feature of "Western civilization," they pinpointed the importance of preserving the individual and personal rights of migrant workers, and the importance of social rights in the free development of personality (Doublet 1952). Defending the "personality" of social security law, they framed a new conception of social security law, unmoored from its territorial and national ties, in the late 1940s (Watillon 1953). A "personal" law would allow any "person" to collect benefits from any country where they worked. They introduced a range of arcane technical concepts ("aggregation," "totalization," "portability") for the purpose of implementing this equalitarian principle.

Born in Berlin, Kurt Jantz (1908–1984) had worked for the Department of Social Security at the *Reichsarbeitsministerium* since 1938. After a short post-World War II interlude whose reasons are unclear (but probably denazification-related), he had a stint as a university professor of theology before returning to state affairs in 1951. In 1953, he was appointed head of the Department of Social Reform at the Ministry of Labor. He remained in high-level positions throughout the 1960 and 1970s and represented Germany at the Administrative Commission.

In addition to being a senior civil servant, he occupied academic positions. An honorary professor of social law at the University of Cologne, he was a founding member of the German Association for the Science of Insurance upon its 1959 relaunch and presided its working group on social security. This association was mainly composed of scholars and conducted studies on the international legislation of social insurance. Jantz theorized the "new conceptions" of international social security that had emerged in the aftermath of World War II. In multiple papers, he dismissed the nation-state-centric approach to the subject as no more than a "relic."[26]

His theory was based on the German concept of "*Freizügigkeit*" (freedom of movement), to which he gave a philosophical meaning, expanding the individual's freedom of choice, tinged with a strong anti-communist flavor and intimately linked to social security, as "there is no freedom of movement without social security, or better: no freedom of movement which deserves this name" (Jantz 1962, 425). In his many articles and talks on the topic, *Freizügigkeit* does not primarily serve the purposes of the European market. Rather this freedom is "essentially" to be seen as a "right of the personality to

[26] IfZ, archive Kurt Jantz, ED 431/19-6: "Die Hauptgrundsätze der zwischenstaatlichen Sozialversicherung" (1966).

choose their profession and working place in freedom."[27] The freedom of movement and the social security that comes with it are the "expression of the personality principle." His argumentation translates a legal principle, the personal right to receive insurance, into a political and philosophical one, the right to freely develop one's personality.

In "relative independence from the national administrations," the Administrative Commission carried out this quasi-philosophical mission. Kurt Jantz argued that the Commission had a supranational competence when it came to setting and unifying the meaning of the regulations:

> Regulation no. 3 has established a specific community institution: the Administrative Commission within the EEC Commission. Even if its members represent their governments, the commission enjoys a relative independence from national administrations. Its missions are to implement the regulation concerning the Social Security of migrant workers, to interpret the regulation – subject to monitoring by the courts – and to implement the financial decisions together with the board of auditors established by Regulation no. 4. (Jantz 1961, 7)

To him, both the European Court of Justice and "the permanent contacts within the Administrative Commission" worked in favor of a supranational approach.

The meaning these national civil servants gave to their collective endeavor found an echo in circles of social law specialists who remained in close touch with national and international academic societies. As I already pointed out, Kurt Jantz was a founding member of the German and International Society for Insurance Law and was close to German specialists of social security law such as Hans Zacher, the founder of the Max-Planck-Institute for International Social Law (1976). Most of them were members of the European Institute for Social Security (EISS), a hub of administrative and academic specialists founded with the financial support of the European Commission. In 1970, most of the members of the EISS bureau of the EISS had at some point been involved in the work of the Administrative Commission: the Belgian, Luxembourgian, and German representatives, Delpérée, Jantz, and Trier; the ILO representative, Perrin; EEC civil servants (Crijns and Ribas); and even the former commissioner, Levi-Sandri. Together with renowned scholars (Lyon-Caen, Troclet, Duchâtelet, etc.), most of the government representatives (Doublet, Netter, Laroque, Zöllner, Kaupper, Coppini, etc.), and the other employees of the EEC Department for Social Security were present at EISS events from 1969 to 1973, discussing the history of the social security of migrant workers, the perspectives of "European social security," or dealing with technical issues such as the "portability" of benefits beyond borders ("portability"

[27] IfZ, archive Kurt Jantz, ED 431/20-1: Soziale Sicherheit und Freizügigkeit in der EWG (16 January 1965).

is a jargon term for saying that migrants can "carry" – "porter" – and hence retain their social security entitlements when they cross a border).[28]

The new international setting gained supporters among the scholarly community. Otto Kahn-Freund, as a leading scholar in the field, provided one of the most refined *fictio juris*, rationalizing the new body of international law. In several papers presented at conferences during the 1960s and 1970s, Kahn-Freund whose last book, which he could not complete for health reasons, would have been devoted to the EEC, rationalized the European social security using a reference to the German *Zollverein,* the German economic unification (1833–1870). It was clear to him that the European regulations "waive[d] the territorial application of social security schemes." In his attempts to elucidate the difference between the common market and a mere free trade area, the very first difference he highlights is the existence of freedom of movement of workers, referred to as "*Indigenat*," an "old German word" used for workers endowed with the right to settle anywhere they wanted to within the German confederation. "*Indigenat*" must mean for us in 1960 something else than in 1860, at the time of what Lassalle called a "night watcher state" and Harold Laski a "negative state." In the 19th century, "*Indigenat*" conferred negative protection: it prevented the workers from being deported and guaranteed their personal protection under civil and criminal law. In the 20th century, Kahn-Freud argued, the treaty of Rome guaranteed a "social-political *Indigenat*" to workers, which is especially demanding for the social security legislation. It is no wonder, he says, that "*the very first great act of legislation of the EEC, the very first example of the use of the competence of the Community organs to edict supranational law for the six countries was the social security regulations*" (Kahn-Freund 1961, 156). In his description of the Administrative Commission, he stressed that beyond its administrative functions, the Commission's judicial role was essential to the interpretation of a regulation which at the time would apply to over half a million migrant workers.

These singular rationalizations made by a small group of specialists of social security law came to be at odds with European law in general. In 1973, the UK entered the EEC. The British Department for Social Security was eager to understand the legal framework and the role of the Administrative Commission. The Administrative Commission was so specific that the British authorities developed conflicting interpretations of its legal role. A memo summarized it insisting that the Commission's role was controversial. On the one hand, some briefings contended that the authorities had to abide by the decisions published by the Administrative commission; according to a memo, it would take a very good reason to challenge the Administrative Commission's agreements in court. On the other hand, the legal adviser of the Ministry's

[28] BNA, PIN 34/398.

Juridical Service Ann Windsor claimed that the Administrative Commission would "act as if its decisions were legally binding," but that the legal basis for this was tenuous. Windsor quoted an article by Hermann Maas calling the Commission an "institutional curiosity."[29] The chief redactor of the *Common Market Law Review*, Hermann Maas, was a Dutch professor of law who published an article bearing this very title in 1965. To him, the Commission was an "institutional curiosity" not because it acted under false pretenses ("as if its decisions were legally binding"), but because it was the only organ of the EEC to be delegated the ruling power of the Council, which made it a ruling body in its area of competence. Hermann Maas called for dismantling the Commission in its current form, and downgrading it to the status a merely consultative body, with its powers transferred to the European Commission itself (Maas 1966).

5. Conclusion

In 1980, Alain Coëffart, the Secretary-General of the Administrative Commission, lauded the "exemplary success" of the EEC in the domain of social security. This was particularly remarkable, in his view, in that social security is "one of the few domains where the human dimension prevails over the economic dimension, which was for a long time the core concern of its action" (Coëffart 1982). Having long focused on the interplay between States and Commission and on the (purportedly neoliberal) ideology of the Commission, the literature has all too often ignored bureaucratic power and the role played by sectorial ideologies and *rationales* in the European policy process. Clearly, the proponents of European Social Security defendants had little to do with mainstream ordoliberals and the neoliberal globalists who have been widely considered as driving forces of the European integration (Slobodian 2018; Lechevalier and Wielgohs 2016). An epistemic community of their own (Haas 1992; Kott 2008), they were rather steeped in the ILO ideology of the decommodification of labor, and relied on sector-specific legal rationalizations (equality of treatment, personalization, and deterritorialization of social law). In this sense, knowledge is power, but not anybody's knowledge. Pooling both expert and bureaucratic resources, national officials (sometimes acting as international civil servants) defended a supranational system of their own making to govern labor mobilities.

Started by the end of WWII, their grand oeuvre, the coordination of social security systems, is far from mainstream European law. This article explains why the Administrative Commission, which still exists, and the seemingly tedious bureaucratic work it does have been so crucial to European social

[29] BNA, PIN 34/199: memos 1973.

security and why it is nowadays seen as an unpolitical, distant, and obscure European policy actor. On the strength of their legal virtuosity, these bureaucrats pooled enough resources to develop and stabilize a sectoral domain that remain mostly uncontested up to the creation of the European Labour Agency. European Social Security is still governed by principles forged in the 1940s and 1950s, in the highly idealist context of the "new social order" promised by the ILO during World War II.

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State Power and the Emergence of Free Movement in Europe: Containing State Control over Human Mobility Since the Late 1940s

Emmanuel Comte *

Abstract: *»Staatliche Macht und die Entstehung der Freizügigkeit in Europa: Begrenzung der staatlichen Kontrolle über die menschliche Mobilität seit den späten 1940er Jahren.«.* This article investigates the origins and evolution of the European free movement regime. It argues that free movement emerged as a mechanism to contain state control over human mobility in post-war Europe. The study highlights Germany's pivotal role in advocating for liberal migration policies to rebuild trust and overcome wartime suspicions, contrasting with more restrictive approaches from other states like France and Britain. The article is structured into three main sections: The first section examines the push for free movement driven by Germany's economic and political motives. The second section explores the regime's development within the European Community framework, emphasising the flexibility and differentiation that allowed gradual acceptance by reluctant states. The third section, delves into the persistent tensions and opposition faced by the regime, particularly concerning low-skilled migration, culminating in significant events like Brexit. Through archival records and historical analysis, the article reassesses the free movement regime's trajectory, highlighting the interplay between state power, integration frameworks, and labour market tensions.

Keywords: European integration, free movement, migration policies, Germany, labour mobility.

1. Introduction

This article examines the origins and evolution of the European free movement regime, a core pillar of European integration allowing European nationals to cross borders and reside anywhere within the European Union. The regime's emergence in the 1950s and 1960s constituted a remarkable transformation given most Western European states' restrictive immigration

* Emmanuel Comte, University of Cyprus, Department of Social and Political Sciences, OED Building 01, Floor -1, P.O. Box 20537, CY-1678 Nicosia, Cyprus; comte.emmanuel@ucy.ac.cy; ORCID iD: 0000-0002-1341-9615.

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policies after World War II. While existing scholarship has illuminated important aspects of free movement's beginnings, such as Italian economic motivations, this study highlights the decisive role of German preferences and state strategies, along with the contentious character of free movement across the history of European integration.

Drawing on archival records from European negotiations across the history of European integration, it shows how Germany's advocacy, rooted in its post-war geopolitical predicament, decisively shaped the regime's liberal character and breadth. Germany sought to overcome lingering post-war suspicions and rebuild trust through rights-based notions of free movement. The contrast with the more limited aims of other states is stark. Britain opposed lifting work permits in the 1950s, echoing union hostility towards foreign labour. France was reluctant to open its labour market until led to do so in the European Community framework.

The article analyses how the regime developed within the European Community framework over the decades. It utilises records from Community institutions and national governments to demonstrate how the flexibility of cooperation enabled progress. Germany's continued leadership, combined with differentiated integration, maintained momentum, allowing subsets of states to advance. However, the study also reveals significant state control retained via policies like education and qualification requirements that constrained low-skilled migration. Governments like France resisted recognising foreign qualifications, obstructing free movement. When the European Court of Justice intervened, it merely enforced intergovernmental bargains rather than creating new obligations.

Finally, the article traces how the regime has engendered recurrent contestations since its inception. It reveals consistent opposition to low-skilled migration throughout the post-war era as the primary source of contention. The orchestration by national states of this discontent culminated in the Brexit vote, but it was nothing new. British coal miners protested the immigration of Italian miners as early as 1950, foreshadowing labour tensions to come. In the 1960s, Dutch construction workers in Germany faced accusations of unfair competition from German workers.

Hence, the article provides a comprehensive reassessment of the free movement's origins and evolution by highlighting Germany's critical role, the opportunities but also constraints of the Community framework, and the enduring tensions surrounding lower-skilled migration. It relies on archives from the Council of the EU, the European Commission, and the German Foreign Ministry.

This article will proceed in three main sections, tracing the origins of the European free movement regime, its production through Community cooperation frameworks in subsequent decades, and the contestations it faced

throughout its history. The conclusion will synthesise key aspects and reflect on the implications for European integration.

2. Origins of Free Movement

The formation of the liberal migration regime in Western Europe after World War II was less the product of an intellectual debate than the result of the constraints imposed by rising state control over human mobility in Europe in the late 1940s and early 1950s. This state control primarily took the form of restrictive and arbitrary bureaucratic practices by immigration states like France and Belgium that created tensions for emigration states like Italy and West Germany. It was the need to resolve these tensions that led West Germany to champion negotiations on free movement in Europe.

In the late 1940s, Western European immigration states like France and Belgium imposed visa requirements, work permits, and quotas to strictly control immigration flows. They required specific documentation like "moral standards certificates" and medical exams to approve immigrant entries. Belgium deferred family reunification and required two years of prior residence before granting permanent work permits to foreigners (Comte 2018a, 10-1). These bureaucratic burdens generated recurrent friction with emigration states like Italy, but also West Germany. Italy faced high unemployment after World War II, with over 1.5 million jobless by 1948, and sought outlets for its surplus labour (Romero 1991, 29-30). But opportunities were limited by immigration states (Guillen 1989). Bilateral labour recruitment agreements with France and Belgium allowed only small annual quotas.

The immigration bureaucracy particularly irked West Germany in the late 1940s as it struggled to absorb over 9 million German expellees from the East while Eastern Bloc emigration continued. Unemployment skyrocketed, reaching 1.85 million by March 1950 (AAPA 1951). West Germany accepted the need for emigration but preferred nearby European destinations so emigrants could swiftly return once the German economy rebounded. This position was clear as early as 14 January 1950, in an interministerial meeting at the Federal Ministry of the Interior, chaired by Gustav Heinemann, Federal Minister of the Interior. A representative from the Federal Ministry for All-German Affairs, Dr Türk, considered that it mattered to keep German expellees in proximity if it was to be expected the Eastern territories would return to Germany. In the meeting, Helmut Meinhold, department director at the Federal Ministry of Economic Affairs, Julius Scheuble, of the Federal Ministry of Labour, and a representative from the Federal Ministry for the Marshall Plan, Dr Rieck, all agreed that emigration should be only temporary and not lead to permanent expatriation. From this point of view, Rieck underlined that, in the movement to form a united economic space in Western Europe,

the freedom of movement of workers was essential (AAPA 1950a). Free movement did, therefore, not have an origin in Community negotiations but was something that interested German policymakers from the very creation of the Federal Republic, which they sought then to include in various international organisations.

However, persistent visa controls and discrimination, like restrictions on German settlement in France's Alsace region, obstructed this aim (JORF 1946, 2264). Eager to resolve the tensions, West Germany unilaterally dropped visa requirements for the nationals of other member countries of the Council of Europe or the Organisation for European Economic Cooperation (OEEC) in July 1953 and championed the inclusion of labour free movement at the pivotal 1955 Messina Conference for the Treaty of Rome, signed two years later (Comte 2018a, 31). As recognised by the historian Roberto Sala, the "German government proposed the formula that established the institution of freedom of movement among the objectives of the Community" (Sala 2004, 138).

The restrictive immigration practices of the late 1940s and their implications for West Germany drove the push for the liberalisation of migration in Western Europe. More idealistic visions for European unity played a secondary role. It was the need to resolve the tensions for key states like West Germany that ultimately impelled free movement negotiations in the 1950s.

The Germans followed both economic and political motives in their support for free movement in Europe. Economic motives included the expansion of German firms in Europe and the management of population movements to solve temporary unemployment in Germany. Political motives included strengthening the cohesion of Western Europe behind Germany.

Economic motives were important for Germany's support for free movement. German negotiators in the discussions preparing the Treaty of Rome arranged to include independent workers and firms in the planned free movement provisions (HAEU 1956; Comte 2016, 151). This was to remove obstacles to the right of establishment and foster the mobility of auxiliary professionals, such as lawyers, doctors or architects that would assist German firms operating abroad (Comte 2018a). A German memorandum from August 1955 called for a working group to "define the particular problems of the free movement of physical persons whose occupational activity was not a salaried job," meaning the self-employed and companies (Comte 2016, 151). German Minister of Economic Affairs Ludwig Erhard, who advocated for business interests, led this push. The Treaty of Rome then included a general principle of non-discrimination that benefited Germany by allowing German nationals and firms to "perform all legal acts in the same conditions as nationals" across the European Community (CACEU 1955). This favoured the penetration of markets by German companies.

The management of population movements to solve temporary unemployment was another economic motive for Germany. West Germany started

recruiting Italian guestworkers in 1955 when labour shortages emerged in German industry and agriculture (Sala 2004, 125-8). However, this was done through a traditional guestworker recruitment agreement conforming to the old migration regime (Comte 2016, 141; Rass 2009, 2010; Rosental 2011). West Germany only pushed for free movement in a multilateral framework, so that it could also allow for potential German emigration. Indeed, the German government still considered the division of Germany temporary in the 1950s. German policymakers supported free movement even if it brought limited immediate benefits for German workers because it could facilitate temporary German emigration in times of high unemployment and immigration from the East (Comte 2016, 144).

Political motives were critical. German Chancellor Konrad Adenauer considered European integration a way to gain "the weight of a united Europe" in negotiations with the Soviet Union over German reunification (Auswärtiges Amt n.d.). Free movement strengthened Western European cohesion, reducing chances of defection. The Germans were indeed anxious about the strong electoral results of the Italian Communist Party, which could defect from the Western alliance (Comte 2018a, 46). Extending free movement rights to Italian workers would reduce unemployment and communist influence there. As Adenauer noted, "a great impetus to the Communist Parties in France and Italy" could destroy Western unity, vital for Germany (Adenauer 1966, 387).

In short, the Germans followed both economic and political motivations in championing free movement in Europe in the 1950s. Economically, it aided German companies abroad and managed unemployment at home in times of geopolitical upheavals. Politically, it fortified Western Europe, Germany's geopolitical base.

In the German strategy for the European free movement regime, the notion of equal rights for migrant and native workers aimed to address the discriminations Germans were facing after World War II, for instance, for visas. After the war, Germans continued to face cumbersome visa requirements and restrictions on residence and employment in other West European countries due to lingering distrust. For instance, the consulates of France, Belgium, and Sweden in Germany could not deliver entry visas to Germans without prior consent from their central administrations, reflecting suspicion of German travellers (Archives of the OECD 1950). The French Ministry of Interior also severely restricted new settlements by German nationals in border regions like Alsace as a bulwark against German influence (JORF 1946, 2264). The notion of equal treatment regardless of nationality championed by German negotiators sought to eliminate such discrimination.

The specific provisions Germany pushed for on free movement reflected this preoccupation with equal rights after wartime suspicions. In the negotiations on the Treaty of Rome, German representatives obtained an agreement that "Member States shall, within the framework of a joint programme,

encourage the exchange of young workers" (Treaty establishing the European Economic Community 1957, Art. 50). The German government had unsuccessfully called for such exchanges in the early 1950s to resolve shortages of apprenticeship positions, but still supported them later as exchanges intrinsically promoted equality (HAEU 1962). German Minister of Labour Anton Storch declared the free movement of persons a matter of justice, reflecting the view that rights should not depend on arbitrary border distinctions (HAEU 1954b).

More broadly in the negotiations, German representatives introduced provisions to facilitate the movement and establishment of all Community nationals, not just workers. They sought the abolition of not just discrimination but more general obstacles which prevented Community nationals from exercising a self-employed activity (HAEU 1956). German negotiators secured provisions that the right of establishment for the self-employed should allow Community nationals to take up and pursue activities as self-employed persons "under the conditions laid down for its own nationals by the law of the country where such establishment is effected" (Treaty establishing the European Economic Community 1957, Art. 52). Again, the emphasis was on equal treatment to counter distrust of Germans. They also challenged restrictions on residence permits. By couching free movement as equal rights, the notion served both economic and political motives in the German strategy: facilitating labour mobility while rebuilding trust after the devastations of war.

The contrast with provisions sought by other states illustrates the distinctiveness of the German approach. Given Belgium's difficulty in hiring the workforce necessary for Belgian mines, the Belgian delegation wanted a central placement agency to match labour demand and supply across the Community and pass some of the cost of immigrants' hiring to the Community level, which failed (HAEU 1954a). Likewise, the French delegation wanted to secure the inclusion of overseas territories in the Treaty's scope but failed to extend free movement rights to their populations (Comte 2018a, 50-6; Brown 2022, 162-3). The German focus on equal rights regardless of nationality or place of birth represented a more principled stance and was decisive in shaping the regime, while other immigration states had less comprehensive plans and more limited influence.

In essence, the German vision arose from the need to overcome lingering suspicions after World War II. While German advocacy and constraints from state control of mobility in Europe decisively shaped the emergence of European free movement principles in the 1950s, the regime's concrete implementation occurred through negotiations within the European Community framework in subsequent decades. This transitioned free movement from a project into reality, albeit gradually and not without continued reluctance from certain members. The institutional machinery of the Community provided opportunities to prod recalcitrant states through flexibility, bargaining,

and differentiation. Yet as the following section will explore, integration frameworks also left space for governments to manoeuvre and constrain low-skilled migration. The production of free movement combined lofty goals, economic interests, and national control.

3. Production of Free Movement

The European Community and later the European Union has been the primary multilateral forum for negotiating the freedom of movement in Europe. This framework has offered opportunities for reciprocity but also differentiation, allowing reluctant partners to be convinced over time to join the freedom of movement.

The negotiations started in a difficult context, with European countries protective of their prerogatives in immigration policies after World War II. In 1950, talks stalled in the OEEC on lifting visa requirements or work permits. In that framework, Britain opposed lifting work permits, citing unions' hostility to foreign workers, while France was concerned about opening its labour market given the substantial membership of this organisation of 18 countries (Comte and Paoli 2017, 261-9; Comte 2023, 364).

In the European Coal and Steel Community (ECSC), West Germany pushed for the free movement of coal and steel workers, hoping to create a precedent for broader free movement (AAPA 1950b, 2). The ECSC turned out to be an adequate framework because of its limited membership and focus on Germany and France. The Messina Conference relaunched European integration in 1955 with the six ECSC members planning the European Common Market. The German Memorandum proposed at Messina the "gradual introduction of the free movement of labour," adopted in the final resolution (Comte 2023, 367). The Treaty of Rome in 1957 provided for freedom of movement by 1970.

An important limitation was the exclusion of those who were not nationals of the member states from the benefits of the free movement of workers. This freedom was a bargain among member states. Even though there were ambitions from the beginning to extend it beyond the nationals of the founding members, only the enlargements of the Community were to offer such a path (Comte 2018a, 50-6, 69-74). The Community framework allowed reluctant partners like France to accept freedom of movement gradually and to a limited number of countries at first. While Germany wanted to extend free movement to most other West European countries, France could accept first an opening limited to the five other member countries.

The Community framework also allowed for a variety of trade-offs between France and Germany over the following decades, alleviating French reluctance over freedom of movement (Comte 2025). This freedom of movement was implemented in stages, and the vast German labour market further

overcame reluctance. France used transitional measures, like work permit priority periods, until lifting barriers in 1968. The expansion to other countries of emigration outside of the six took time. Greece and Turkey obtained a hope to benefit from the freedom of movement via association agreements in 1961 and 1963, but this was a distant prospect (Comte 2023, 369). It was only from the late 1980s that some Mediterranean countries were finally able to join, but Turkey had to remain outside the free movement regime.

The flexibility in the frameworks of cooperation became even more prominent from the 1980s onwards, ushering in a period of differentiation. Differentiation facilitated the abolition of internal border controls under the Schengen agreements, by allowing France, Germany, and the Benelux countries to exert pressure on Mediterranean member states. They were enticed by the promise of access to the new borderless market if they enforced stricter controls on external immigration (Comte and Lavenex 2022, 127).

Differentiation also allowed to proceed despite the reluctance of recalcitrant members, namely Denmark and the UK. Special Protocols in EU treaties allowed them to opt out of certain policies related to the Schengen area (Comte and Lavenex 2022, 127-8). Additionally, non-EU members Norway, Iceland, and Switzerland eventually joined Schengen for its economic benefits (Comte and Lavenex 2022, 130). In a nutshell, the strategic scope of the Community framework and its flexibility have made it the dominant forum for developing the European freedom of movement.

Within this framework, Germany moved first to guarantee free movement in Europe. As early as EC Regulation 38 was enacted in March 1964, Germany enforced a complete policy of free movement towards other member countries. By contrast, France kept protecting its labour market for a few more years. This regulation still allowed France to impose two weeks after a company had advertised a job before Community nationals could take it (Goedings 2005, 187-8). This period served to give priority to French workers and France applied this restriction to all vacancies for unskilled office and retail employees across the country (HAEC 1965). France also applied this restriction to manual jobs in Lower Normandy, Brittany, and Pays-de-la-Loire as well as all shipyard areas in Western and Southern France, where labour conflicts were particularly acute. Interestingly, the areas that the French government had tried to protect from Community immigration were those where the May 1968 strikes started, culminating in the worker uprising of that year. The control of human mobility within Europe was thus still considered a major area of state policy.

German preponderance in the absorption of migration flows in Europe was nevertheless crucial to overcome French concerns. West Germany was absorbing the bulk of Italian migrants in the Community, with 203,064 Italian workers entering the country in 1965 compared to only 18,043 entering France (HAEU 1966). The share of Community immigration in total

immigration to France collapsed from around 65 per cent in 1958 to only 3.4 per cent in 1969 (Böhning 1972, 79). This situation alleviated French concerns regarding the application of free movement (Comte 2018a, 83). The government was ready to drop the last forms of protection against Community workers. In October 1968, the French accepted, with Regulation 1612/68, the abolition of any priority for French workers. The contribution of EC Regulation 1612 in 1968 was mostly to remove the derogations the French still applied.

Beyond access to employment, West Germany's absorption of Italian migrants also shaped the negotiation of social security rights for migrant workers. Despite initial French resistance, Germany drove a new regime of exportable social security rights in the Community by transferring the bulk of social security benefits for migrants and their families. In 1961, Germany paid allowances to 47,925 such families; France to eight times fewer. By 1964, healthcare benefits paid in Italy to families of migrant workers amounted to 394.2 billion Belgian francs on behalf of Germany, compared to 89.5 billion Belgian francs on behalf of France (Commission administrative 1966). The transfer of most benefits to Italy maintained migrant families there rather than encouraging their relocation to Germany, in line with German immigration policy goals.

Initially, France achieved temporary exemptions, for instance, to pay reduced family benefits abroad compared to those on French territory. However, France had growing difficulties maintaining its position and the trend was towards the arrangements sustained by West Germany (Comte 2018a, 88-95). By 1969, West German social security institutions paid 88 per cent of benefits for the families in Italy of Italian migrant workers in the Community (HAEU 1969b). Social security transfers thus marked another area where previous French exceptions in the application of free movement were abolished. In a nutshell, free movement was produced in the Community framework, with Germany providing the lead and France ultimately following.

Beyond its flexibility and the role Germany played within it, the European Community framework has also allowed states to keep tight control over migration affairs, alleviating their concerns. European rules have often left states with some room of manoeuvre. In the 1970s, they maintained their discretion to deny recognition of foreign qualifications as a barrier to free movement, despite the right of establishment being directly applicable after the end of the transition period in 1969. For instance, the French government decided in the early 1970s to require a qualification from all sailors, with Transport Minister Robert Galley emphasising that "The French government does not recognise, and does not intend to recognise, the equivalence of foreign qualifications." As a result, he stressed, the freedom of movement in the European Community would not "have big consequences in practice" for French sailors (JORF 1972–1973).

The non-recognition of foreign qualifications remained a significant hurdle to free movement in the following decades. When architects from West Germany and the Netherlands sought the right of establishment under the directly applicable Article 52 of the Treaty, French architects in the Liaison Committee of Architects opposed any equivalence between university training and the shorter training at German and Dutch technical schools (CACEU 1967; HAEC 1969). In December 1977, delegates from Britain, Denmark, France, and Ireland in the Committee of Permanent Representatives resisted Germany's proposal to recognise the four-year training in German technical schools as equivalent to university degrees (CACEU 1977). Negotiations on architects remained blocked 15 years after they had started – exemplifying the significant degree of control states maintained over this policy area.

When the European Court of Justice has condemned states, it has merely enforced the intergovernmental bargains underlying European integration. The Court's April 1974 judgement against France for violating the freedom of movement for European mariners simply referred back to the objectives that governments had agreed to in the Treaty of Rome (CJCE 1974; Comte 2018b). It did not create new obligations but insisted France respect commitments already made. When governments reached policy compromises, the Court provided legal monitoring for their deal.

While the European Community arena enabled progress on free movement principles, integration also engendered recurrent tensions surrounding migration. As the next section will elucidate, on-the-ground realities bred grievances against low-skilled migration. These grievances emanated most saliently from trade unions and labour-intensive sectors facing unwelcome competition and were orchestrated by national states. Opposition never fully dissipated, culminating in major contemporary challenges like Brexit. The evolution of free movement principles always overlapped with undercurrents of contestation targeting the low-skilled.

4. Contestations of Free Movement

The contestations of free movement in Europe have been permanent since the 1950s and have systematically targeted low-skilled migrants. As early as 1950, British coal miners protested the immigration of Italian miners, leading the British government to abruptly suspend an immigration agreement it had just signed with Italy (Romero 1993, 41). This foreshadowed recurrent labour tensions regarding European migration in decades to come and the British restrictive stance in this area. In its early years, the European Parliamentary Assembly denounced "unjustified competitive advantages" for foreign companies employing "workers from their country at wages lower than those in the host country" (CACEU 1960, 1961a). The French and Luxembourg

governments shared this viewpoint, fearing competition through postings by foreign firms with lower labour costs (CACEU 1961b).

In the summer of 1963, the influx of Dutch construction workers into the booming post-war German economy became a case of contestation related to the freedom of movement in Germany itself. The country's economic expansion created a demand for labour that attracted workers from neighbouring countries, including the Netherlands. The contention arose when German workers and employers, represented by the German construction union Industriegewerkschaft Bau-Steine-Erden (IG Bau) and echoed by the International Confederation of Free Trade Unions, levied accusations against Dutch workers and contractors. The accusations centred around the alleged unfair competition posed by the Dutch, their failure to contribute appropriately to social security, and non-compliance with the German wage standards established in collective bargaining agreements.

The contestation methods of the German stakeholders involved formal communications and attempts to enforce the application of German collective agreements on Dutch entrepreneurs operating within the Federal Republic of Germany. Specifically, IG Bau engaged in correspondence with the Dutch union Algemene Nederlandse Bouwbedrijfsbond, highlighting issues such as the evasion of contributions to the Zusatzversorgungskasse (Supplementary Pension Fund) of Wiesbaden by Dutch firms. These firms were accused of neglecting their obligations to contribute to social security funds for their workers in Germany.

The German authorities and unions faced challenges in enforcing these contributions due to the transitory nature of Dutch construction firms operating in Germany. Many Dutch firms, functioning as subcontractors, did not have permanent establishments in Germany and frequently changed their operational addresses, complicating efforts to track them. When the Pension Fund of Wiesbaden considered that these firms failed to comply with their social security contribution obligations, legal actions were initiated. However, the enforcement of such actions proved problematic, particularly when trying to execute judgments across national borders, with many cases ultimately being abandoned due to the difficulty of pursuing them on Dutch territory.

In addition, when firms simply provided services, EC law did not require them to pay social security contributions in Germany. This case exemplifies early contestations related to freedom of movement within the European Community, highlighting both the challenges of applying national labour standards and social security regulations to cross-border workers and firms and the confusion about the exact obligations for cross-border service providers. The methods of contestation included formal communication between unions across national borders, attempts at legal enforcement of collective agreement provisions, and cross-border actions to address non-

compliance by foreign firms operating within national jurisdictions (Comte 2019, 752; HAEC 1963).

By the late 1960s, French unions also voiced apprehension that the free movement of workers under the Treaty of Rome would undermine trade union action (HAEU 1969a). This was despite acute labour shortages in countries like West Germany. Such anxiety persisted into the 1970s and 1980s as richer northern European countries imposed transition periods on lower-income southern European countries acceding to the European Community (Comte 2023, 373). Under the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the treaties, published in the Community's Official Journal on 19 November 1979, the application of the freedom of movement to Greek workers could be delayed by seven years after accession, i.e., until 31 December 1988. For Spain and Portugal, the Accession Treaty signed in Lisbon on 12 June 1985 set similar conditions. Articles 1-6 of Regulation 1612/68 and Directive 68/360 on the free movement of workers were not applicable until 31 December 1992, marking a seven-year transition period post-accession, identical to that of Greece. Furthermore, for three years post-membership until 31 December 1988, family allowances for Spanish and Portuguese workers were calculated according to the law of the family's country of residence.

The primary targets of contestation were consistently lower-skilled migrants, perceived as unwelcome competition by labour-intensive domestic sectors, which called for protective state policies. Initially, destination countries' governments believed that their companies would become the main beneficiaries of the free movement of services, not firms exploiting lower wages. Consequently, the Committee of Permanent Representatives abandoned attempts to regulate posted workers' wages for temporary provisions of services abroad in the early 1960s (Comte 2019, 752).

Yet, in the 1990s and 2000s, the free movement of services, magnified by the enlargements and the grand project of a single market enabled posted workers from lower-wage southern and then Eastern and Central European countries to provide temporary services across the EU. This led to high-profile clashes, especially in the construction sector in countries like Germany, France, the Netherlands, and Sweden. Disputes originated from local construction unions that imposed blockades and required adherence to collective wage agreements. Posted workers were cast as instigators of social dumping who undermined national labour standards when their employment conditions remained regulated by the legislation of their country of origin (Comte 2019, 753-60).

From the late 1980s onwards, groups contesting European freedom of movement surreptitiously reinterpreted the principle of equal treatment. Rather than viewing it as an instrument to create a level-playing field for migrants, they twisted it into a tool for imposing destination countries' wage

levels on posted workers. This prevented posted workers from being cheaper than local workers and competing with them. For instance, in the early 2010s, a Federation of Dutch Trade Unions (FNV) official declared in an interview: "These Poles [...] all we have to do is make sure they don't earn ... they're not supposed to be cheaper than the Dutch guy that is a member" (Berntsen and Lillie 2016, 177). Imposing destination countries' high wage levels on posted workers from poorer countries served to oust them from richer countries' labour markets.

Interestingly, the UK had previously opposed attempts to regulate posted workers' wages in the EU, betting on the competitiveness of its firms. Indeed, until the 1990s, the UK maintained lower labour costs than continental European countries. Consequently, when destination countries started unilaterally imposing their wage levels on posted workers in the 1990s, the UK voted against the 1996 Posted Workers Directive encapsulating this approach (CA-CEU 1996).

However, the situation changed with the EU's eastern enlargements. Poorer central European countries joined the EU in 2004, able to post workers more cheaply (Krings 2009, 52). While Germany and France protected their labour markets by temporarily limiting labour migration, the UK fully opened up. Businesses welcomed the cheaper central European workers, who rapidly found employment in agriculture, food manufacturing, construction, and other low-wage sectors. Within four years, the influx of EU immigrants to the UK was multiplied by more than 12, outpacing flows to other major destinations like Germany or France (Bräuninger 2014).

The rapid influx of over 1.6 million EU immigrants, mostly Poles, within a decade spawned resentment from sectors fearing displacement (Office of National Statistics 2016). Populist politicians adeptly inflamed public anxiety over immigrants' use of social services. This anti-immigrant groundswell fuelled the Brexit campaign's central focus on ending free movement to halt EU immigration (Corrales 2019).

The historic trend has thus been persistent contestation of free movement in Europe by interest groups seeking to curb labour market competition from lower-skilled migrants and reintroduce state control. The 2016 Brexit vote marked not a sudden reaction, but the culmination of longstanding grievances, at a scale threatening the wider European project.

Given the contestations facing low-skilled migrants, the European free movement regime evolved as early as the 1980s to facilitate the mobility of the highly skilled, in alignment with the aims of the evolving single market. This shift favoured graduates from universities and elite institutions, while mobility pathways for the less qualified languished. Propelled largely by the economic priorities of France, Germany, and the UK, the principal western European destinations for intra-community migration, this transformation aligned opportunities under free movement with the desired qualifications.

During negotiations in the 1980s for the Single European Act, Germany spearheaded efforts to mutually recognise university degrees across the Community by mid-1985, aiming to enable a freer movement for graduates (CACEU 1985a). Aligning with German industry groups, the German government also pressed for rapid progress concerning the mutual recognition of qualifications and establishment rights for architects specifically, to ease German firms' market entry abroad. The 1985 Council directive for architects both reflected the convergence of training standards between Germany and France and acted as a "pilot project" for wider recognition of technical credentials (CACEU 1985b).

The broader directive in December 1988 on recognising university qualifications of at least three years' duration demonstrated the endeavour to extend mobility in the professions (CACEU 1986a, 1988b). Crucially, the Erasmus student exchange programme, conceived in 1985 and launched in 1987, sought to nurture cross-border bonds among future "decision-makers" and individuals likely to hold "positions of responsibility," explicitly targeting management, engineering, and science students (CACEU 1985c, 1989). Students enrolled in university programmes from the second year onwards only were eligible. There were about 4,000 participants in the first year (1987/1988) and nearly 10,000 in the second year (1988/1989) (Comte 2018a, 158-9). The accompanying Lingua programme, targeting foreign language students, ensured concentration on these priority fields (CACEU 1990). In two years, the Erasmus programme's budget doubled from 28 to 64 million ECU, showcasing strong demand (CACEU 1986b; OJEC 1989).

Conversely, programmes for less qualified youths under 28 – who were not enrolled in higher education and were either in lower-skilled jobs or unemployed – received paltry funding and participation. While only 5,366 such youths benefited from exchanges between 1979 and 1984, millions in this demographic lacked placements (CACEU 1988a). Minimum wage growth had also diminished opportunities for this group. Their stagnant prospects contrasted sharply with the energetic endeavours to facilitate qualified migration. Hence, regulatory evolution followed the contestations of free movement for the low-skilled.

This evolution should not be misinterpreted, however. Free movement's importance persisted for less skilled migration, especially in the context of enlargements. Compared to emigration from Morocco and Turkey without free movement, arrivals to Germany from new member states Spain and Portugal post-accession surged dramatically in the late 1980s and 1990s. The regime's chief beneficiaries were then male manual labourers, despite the tilt towards the qualified (Statistisches Bundesamt 2018). A similar pattern emerged after the enlargements to Central and Eastern European countries.

5. Conclusion

This article has traced the origins and evolution of the European free movement regime, elucidating Germany's critical role in its emergence as well as the constraints and contestations that shaped its trajectory. It argues that the regime's liberal character was decisively shaped by German advocacy in the 1950s, rooted in Germany's post-war geopolitical predicament. Lingering discrimination against German nationals abroad drove German demands for equal treatment regardless of nationality in the new European community. Hence German preferences were instrumental in establishing provisions that went beyond labour mobility to encompass a principle of non-discrimination.

The article also demonstrates how the regime's implementation occurred through the flexible framework of the European Community in subsequent decades. Progress was gradual and differentiated, overcoming the reluctance of partners like France through Community bargaining. Yet integration also left space for states to constrain low-skilled migration through the non-recognition of qualifications or the application of wage standards. Lastly, the article illuminates the recurrent contestations facing lower-skilled migration since the regime's inception, bred by labour-intensive sectors' hostility. Far from an isolated reaction, Brexit represented the culmination of grievances.

In conclusion, this article offers a thorough reassessment of the origins and evolution of free movement within Europe by emphasising Germany's pivotal role, examining the opportunities and limitations of integration frameworks, and exploring the persistent tensions related to low-skilled labour. While state control over human movement has been curtailed since the post-war era, it has not been eliminated. The benefit of freedom of movement to member states' nationals exclusively is a reminder. Also, state power has periodically reasserted itself, capitalising on the concerns of national low-skilled workers.

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"Living in a Bubble": Labor Mobility of Tech Professionals from Serbia to Germany (2016–2022)

Sanja Beronja *

Abstract: *»Living in a Bubble': Arbeitsmobilität von Tech-Fachkräften aus Serbien nach Deutschland (2016–2022)«.* Why do foreign tech professionals leave highly paid jobs at home and move to the EU? What does their mobility experience tell us about the European governance of labor mobility? Labor migration research on professionals from third countries highlighted their economic motivation and showed that their experience was structured by legal constraints, glass-ceiling effects, and even precarity. I hypothesize that these findings do not provide a full account of their motivations and experiences. Tech professionals migrate to the EU for reasons that are not solely economic and professional and that include lifestyle motivations. To test my hypotheses, I conducted in-depth interviews with tech professionals from Serbia who are holders of the EU Blue Card and currently based in Berlin, as well as with institutional actors of the startup ecosystem of Berlin. I also engaged in non-participant observation of events gathering tech professionals. My results show a particular type of labor mobility that is governed by the institutional framework of the EU Blue Card, local institutional actors in Berlin, but also tech companies, and transnational networks of tech professionals. I show that the mobility experience of foreign tech professionals can be described as "living in a bubble": between privilege and limitation.

Keywords: EU Blue Card, skilled migration, privilege, tech professionals, third countries.

1. Introduction

In June 2019, the first "Ex-YU IT experts Meetup" took place in the headquarters of one of the major tech companies in Berlin. The event was organized in English and gathered more than 45 tech professionals from the former Yugoslavia. The participants first had the opportunity to hear two lectures, one by an entrepreneur from Serbia, and the other by a tech professional in

* Sanja Beronja, Centre Georg Simmel, Ecole des hautes études en sciences sociales (EHESS), 54 bd Raspail, 75006 Paris, France; sanja.beronja@ehess.fr.

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Germany. The lectures were followed by a networking time with food and drinks, appreciated by the participants who insisted on how happy they were to socialize in their native language, exchange information, and extend their networks. The following meetups of ex-YU tech professionals in Germany gathered on average around 60 participants. As part of my fieldwork, I attended two of these events in 2022 and 2023. I was surprised by the number of tech professionals from the former Yugoslavia, and in particular Serbia, who had settled in Berlin, and explained that they came to the city after quitting permanent positions in the flourishing tech sector back home. Their stories triggered my sociological curiosity: Why do tech professionals leave Serbia despite well-paid jobs, the prestige associated with their profession, and strong social ties in their home country? Members of the middle and upper middle class in Serbia, how do they decide to move to Berlin, often with their families? What does this migration tell us about the current dynamics of skilled labor mobility from a third country to the European Union (EU)?

Holders of the EU Blue Card, employed by big tech companies in Berlin, Serbian tech professionals are representative of the "global talent" (Papademetriou and Sumption 2013; Shachar and Ran 2013). Many countries put in place special programs to attract skilled workers. The United States (US), Canada, and Australia were early adopters of these measures already in the second half of the 20th century (Shachar 2006). The EU introduced several measures as part of the economy of knowledge and innovation programs. The most notable example is the EU Blue Card, designed as "Europe's answer to the US Green Card."[1] As part of the goals of European institutions to make the EU "the most competitive and dynamic knowledge-based economy in the world,"[2] an ambition announced at the European Council in Lisbon in 2000 (Cerna and Chou 2013), the EU Blue Card scheme was developed by the European Commission and adopted by the European Council in December 2011 (Cerna 2014).

Such policies were equally established by national actors in EU member states. In 2019, for instance, the French government introduced "French Tech visas" for tech workers, entrepreneurs, and investors. France also created a national "French Tech" initiative which aims to promote cities as places of innovation. Such measures are indicative of the "state marketing" that countries put in place to promote themselves as "attractive" places to attract "global talent."[3] Germany is an interesting example of this phenomenon. A country with a prevalent discourse of "no immigration" in the late 20th

[1] "Live and work in the European Union!" EU Blue Card Network. https://www.apply.eu/ (Accessed December 10, 2024).

[2] "EU Blue Card History." EU Blue Card Network. https://www.apply.eu/BlueCard/ (Accessed December 10, 2024).

[3] Paquet, Mireille, and Juliette Dupont. 2023. "Marketing migratoire et politiques d'attractivité des mobilités privilégiées." Oral communication, 26/05/2023, Institut Convergences Migrations, Paris.

century (Laubenthal 2012), there was an important policy shift in 2005, the year when the immigration law was adopted. Accompanied by public concerns regarding the lack of skilled workers (*Fachkräftemangel*), largely propagated by employers, the German government introduced several key measures to attract foreign skilled workers, especially in the tech sector (Laubenthal 2012). After a "Green Card" was introduced in 2000 (Venema 2004) with limited success, the adoption of the Recognition Law (*Anerkennungsgesetz*) on acceptance of foreign diplomas in 2011 aimed to further bolster the attractivity of Germany.

In 2012, the Directive on the EU Blue Card was transposed to German law. Since then, Germany has become one of the main countries delivering this visa for high-skilled workers from third countries.[4] The main recipients are high-skilled workers from India, Turkey, and China.[5] However, smaller countries like Serbia have become an important contributor to the population of foreign high-skilled workers in Germany. According to the Statistical Office of Berlin, there were 21,000 registered Serbian citizens in Berlin in 2023. In comparison, there were 37,000 registered Russians. This figure is quite high given the overall population of Serbia of 6.6 million in 2023.[6] In its brochure in 2019, Berlin Partner for Economics and Technology, a public-private agency promoting Berlin, put Serbia among the top third of non-German nationalities in Berlin, with numbers equaling those from the United States, United Kingdom, or Lebanon.

The presence of Serbian citizens in Germany is not a new phenomenon. The second half of the 20th century was marked by mobility labeled as "temporary migration" (Mihajlovic 1987). Although officially stopped after the "Recruitment ban" in 1973, its social consequences and transnational ties between Germany and countries of ex-Yugoslavia have been visible up to this day. Most of those "temporary migrants" from Serbia chose destinations in the big industrial and economic centers of Western Germany (Mihajlovic 1987). Berlin has become a popular destination for Serbian citizens only in recent years, with a new wave of skilled migration, especially students, tech professionals, and medical staff (Graf 2022).

All of these forms of mobility can be partly explained by the power relations between Germany and Serbia. Germany has a strong economic presence in Serbia, which acts as a pull factor for various categories of migrants, from low-skilled to high-skilled workers (Arandarenko 2021). The labor mobility framework can provide satisfactory analytical tools to observe most of the

[4] "Residence permits – statistics on authorisations to reside and work." Eurostat. https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Residence_permits_%E2%80%93_statistics_on_authorisations_to_reside_and_work (Accessed December 4, 2024).

[5] "Figures on the EU Blue Card." Federal Office for Migration and Refugees. https://www.bamf.de/EN/Themen/Statistik/BlaueKarteEU/blauekarteeu-node.html (Accessed December 6, 2024).

[6] "Population, total – Serbia." World Bank. https://data.worldbank.org/indicator/SP.POP.TOTL?locations=RS (Accessed December 6, 2024).

current labor mobility from Serbia to Germany. "The best and the brightest" (Batalova and Lowell 2007), be they students or skilled workers from "peripheral countries" (Wallerstein 1974, 1980, 1989), are attracted by more developed countries with stronger economies. An abundant literature on skilled workers in Silicon Valley has documented these flows and showed the somewhat mixed experience of these workers, marked by a perceived glass ceiling and sometimes even precarity (Saxenian 2002; Chakravartty 2006). In the European context, analyses of the East-West mobility of migrants from Central and Eastern Europe after the EU enlargements of 2004, 2007, and 2013 have shown the persistence of the East-West power structure despite the increased agency of these migrants (Favell and Nebe 2009; Favell 2008a, 2015, 2018).

All of this research has analyzed migrants from the perspective of their nationality and has focused primarily on the economic and professional motives of their migration. However, I suggest that skilled labor mobility research can explain only a part of the mobility phenomenon of Serbian tech professionals to Berlin. It is useful in uncovering the structural dimension, namely the economic conditions and legal framework that structure the labor flow from Serbia to Germany. However, the analysis of structural elements must also take into account the particular social contexts and non-economic motives that are important for the agency of these professionals (Csedö 2008; Triandafyllidou and Gropas 2014). In particular, I suggest that economic motives cannot provide a complete explanation of the mobility of tech professionals from Serbia to Berlin. Given their social positions in their home country, their mobility is governed by an interplay of several types of actors and networks on both a local and a transnational level. Their decision to move to Berlin is indicative of other motives and aspirations. To better understand the mobility of Serbian tech professionals to Berlin, I turn to the literature on lifestyle migration:

> Lifestyle migration as a concept offers a way of thinking about migration – in particular, about what migration *means* to some migrants in some places – that draws attention to the fact that lifestyle appears to be a main motivation in some migrations. (Benson and O'Reilly 2016, 21)

I suggest that the concept of lifestyle migration can complement the labor mobility framework because it "refers specifically to motivations – the search for a better way of life" (Benson and O'Reilly 2016, 25). The category of a "better way of life" is subjective and "framed around consumption, and inferring existential and moral dimensions" (Benson and O'Reilly 2016, 24). Lifestyle migration also focuses on the destination location, which seems particularly adapted in the case of Berlin. This city has been analyzed as a lifestyle destination for EU citizens (Griffiths and Maile 2014). It is interesting to complement this research by an analysis of the skilled labor mobility from a third country to this city.

This choice can seem counterintuitive since the lifestyle migration framework is usually used to describe migratory experiences and privileged mobilities (Croucher 2012) in a North-South framework. Benson explains that "privilege is structural and systemic, negotiated through the practice of lifestyle migration" (Benson 2014, 47). This structural privilege is held by lifestyle migrants who are "relatively affluent individuals, moving either part-time or full-time, permanently or temporarily, to places which, for various reasons, signify for the migrants something loosely defined as "quality of life" (Benson and O'Reilly 2009b, 621). Their privilege is characterized by "the possession of assets and resources (e.g. financial capital from incomes, pensions, savings, and property ownership), alongside the ease of movement resulting from relative privilege (e.g. the possession of passports from relatively powerful countries)" (Benson and O'Reilly 2016, 24). While the structural privilege may facilitate migration, it is reshaped by the process of migration.

I would like to question this definition of privilege by focusing on various categories of actors and their practices that participate in the making and experience of mobility of tech professionals from Serbia to Berlin. This brings us to the main research question: What are the mobility motives and experiences of Serbian tech professionals and how is their agency shaped by the EU Blue Card scheme and the socio-economic context of Berlin? What do they tell us about the governance of skilled labor mobility from third countries to the EU?

I argue that the mobility of tech professionals from Serbia to Germany is a case of a particular type of labor mobility that is governed by the institutional framework of the EU Blue Card, local institutional actors in Berlin, organizational practices, and transnational networks of tech companies in Berlin and Serbia. I show that the mobility experience of foreign tech professionals can be described as "living in a bubble": between privilege and limitation. Here, I analyze this bubble as an articulation between the agency of those migrants, based on their different forms of capital, and the structure that is created by an interplay of local and transnational institutional and private actors and networks (Giddens 1979). The result is a new category of migrants, as a hybrid form of labor and lifestyle migrants. They detain a relative privilege negotiated through their transnational agency, which is enabled, but also constrained by the legal scheme and the local context of their host country.

1.1 Outline of the Article

The article will analyze the shifting forms of the bubble throughout the interplay of the EU Blue Card scheme and the practices of private actors and networks: first as a "tech bubble" in Serbia, then an "international bubble" in Berlin, and finally a "transnational bubble" related to both local and transnational ties. After highlighting the structural dimension of the professional and

private experiences of professionals in Serbia that fueled their aspiration for mobility (section 1), the article will focus on how their agency is reshaped through the mobility enabled by the EU Blue Card and their experiences in the socioeconomic context of Berlin (section 2). The last section will analyze the privileges and constraints of that "bubble" experience.

1.2 Qualitative Methodology

I collected material by conducting 18 semi-structured interviews with Serbian tech professionals in Berlin. I met them at several tech events organized in Berlin as well as through personal networks. Interviews contained questions about their personal and professional pathways, mobility conditions, and professional and private experiences in the host country. I also conducted seven interviews with officials from public institutions and support structures in Berlin to collect information about their strategies, practices, and discourses on the local tech culture. Finally, I conducted a documentary analysis of the legal framework of the EU Blue Card in Germany, as well as promotional material produced by local institutions promoting tech culture in Berlin.

1.3 Sociodemographic Specificities of Interviewees

Interviewees are mostly men (15 out of 18). There are only three women in the sample. The average age of interviewees is 36.5 years. Most of the interviewees come from middle-class families. Half of them are from Belgrade, the capital, whereas the other half are from smaller towns in Serbia. They possess degrees in engineering, mathematics, architecture, and computer science, a majority from the University of Belgrade. They all had at least four years of professional experience before coming to Germany, mostly in tech companies in Serbia, occupying various tech positions, on a full-time and permanent basis. Most of the interviewees (16 out of 18) came to Berlin from 2016 to 2022 thanks to job offers from scale-up companies.[7] Half (9 out of 18) came with their families (spouses and children). The main difference between men and women in the sample is that all three women were not married and had no children.

2. From the "Tech Bubble" in Serbia…

The work and life experience of tech professionals in Serbia is an example of the development of the tech sector in the country in recent years. A few of

[7] A scale-up company is a former start-up which managed to grow and "scale up" activities, human resources, and funding.

them summarized that experience as "living in a bubble," i.e., in comfortable conditions significantly better than the rest of the population. In this section, I will focus on the structural features of the tech sector in Serbia which enabled tech professionals to live with high incomes (2.1) but created at some point a sense of limitation that prepared them for mobility (2.2).

2.1 Transnational Development of the Serbian Tech Sector

The information and communication technology (Kleibrink et al. 2018) sector is one of the fastest-developing sectors of the Serbian economy. In 2022, it constituted 10% of the Serbian GDP and is one of the main export sectors.[8] The main employers are foreign tech companies, as well as Serbian startups which started to appear in the mid-2010s. Microsoft was one of the first companies to open a development center in Serbia back in 2005, followed by IBM, Intel, and other major tech companies.[9] The discourse on Serbian tech professionals held by international institutional and private actors is an example of outsourcing in a globalized economy. According to the International Trade Administration, which is a part of the United States Department of Commerce:

> Serbia has high-quality ICT specialists with competitive wages that are attractive for foreign companies looking to outsource. Serbia is attractive in the tech space due to its low-wage but qualified workforce, with excellent English-language and tech skills, as well as its investment incentives of up to €10,000 per employee. Major companies such as Microsoft, IBM, Intel, NCR, and Seven Bridges have either established development centers and campuses in Serbia or have outsourced work to local firms, offering wages that are more than three times higher than the country's monthly average take-home pay of €520 / $616 (2021), but still lower than those offered in EU countries. While still lower than competing tech labor markets in Europe, the cost of developers is rapidly rising.[10]

Indeed, the gap between the cost of Serbian tech professionals and their counterparts in other parts of Europe is diminishing, partly due to the development of Serbian startups that hire both locally and internationally. Nordeus, FishingBooker, and Strawberry Energy are examples of Serbian tech companies that have developed their businesses on an international scale. Since the Serbian labor market was at some point not large enough to

[8] "Serbia – Country Commercial Guide." International Trade Administration of the United States Department of Commerce. https://www.trade.gov/country-commercial-guides/serbia-information-and-communications-technology-market (Accessed December 6, 2024).

[9] "Centar kompanije 'Intel' za Balkan u Beogradu - Srbija deo 'Intel World Ahead Program.'" Ekapija. November 27, 2007. https://www.ekapija.com/news/140159/centar-kompanije-intel-za-balkan-u-beogradu-srbija-deo-intel-world-ahead (Accessed December 6, 2024).

[10] "Serbia – Country Commercial Guide." International Trade Administration of the United States Department of Commerce. https://www.trade.gov/country-commercial-guides/serbia-information-and-communications-technology-market (Accessed December 6, 2024).

cover the needs of these startups, they started hiring foreigners.[11] Offering competitive salaries is one of the ways to attract those professionals to Belgrade. On the other hand, there are more international possibilities for Serbian tech professionals to work remotely. These opportunities for tech professionals contributed to the increase in salaries in the Serbian tech sector. According to the survey done among tech professionals in Serbia in 2022, the average salary in the tech sector in Serbia in 2022 was 1,600 euros per month, with 10% of tech professionals earning more than 3,000 euros per month.[12]

Serbian officials have understood the economic and social potential of the tech sector and have undertaken various measures to promote the country as a new global tech hub. Among other political measures, the World Economic Forum's Fourth Industrial Revolution Centre was opened in Serbia in March 2022.[13] Coding classes have become mandatory in primary schools and more university places in tech-related fields were created in 2019. The government also invested significant resources and tax incentives in supporting local startup initiatives.[14] For example, the Serbia Ventures program was established in 2021 to foster tech funding.[15] The positive image of the expertise of Serbian tech professionals is also anchored in the tradition of technological and engineering sciences that were developed in former Yugoslavia, like in other countries with communist governments in the Cold War period (Csedö 2008).

The gap between the tech sector and the rest of the economy provides not only financial but also social privileges to tech professionals. The tech sector is seen as one of the most dynamic and international sectors of the Serbian economy. The founder of the startup Nordeus is often quoted as an example of a successful Serbian entrepreneur who decided to leave his permanent position at Microsoft and start his own company.[16] The interviews with Serbian tech professionals in Berlin highlight this international aspect of the tech sector in Serbia:

> I started working in 2009, but even before, while I was a student, I was working for foreigners, as a freelancer. I was earning nice money. Then I worked for a startup from London. It was a very interesting experience, working for

[11] "Make Belgrade your new home." Nordeus. https://nordeus.com/careers/ (Accessed December 10, 2024).

[12] "Average salary in Serbian IT industry 1,600 Euro." N1. September 27, 2022. https://n1info.rs/english/news/average-salary-in-serbian-it-industry-1600-euro/ (Accessed December 6, 2024).

[13] "CDIR Serbia." World Economic Forum. https://centres.weforum.org/centre-for-the-fourth-industrial-revolution/serbia (Accessed December 6, 2024).

[14] "The rising tide of Serbia's IT market." Totalent. January 12, 2024. https://totalent.eu/the-rising-tide-of-serbias-it-market/ (Accessed December 6, 2024).

[15] "Serbia Ventures Program." Republic of Serbia Innovation Fund. https://www.inovacionifond.rs/en/programs/serbia-ventures (Accessed December 6, 2024).

[16] Jaime Novoa. "The Serbian hit: how Nordeus became one of Europe's most successful gaming companies without raising a dime in funding." TechEU. December 16, 2014. https://tech.eu/2014/12/16/branko-milutinovic-nordeus-interview-leweb/ (Accessed December 6, 2024).

> a startup. It was really cool and we learned a lot. The startup failed and after that, I moved to a Swiss startup. I stayed there for almost 2 years. It was very interesting, it was a near-sourcing project because it is quite easy for those entrepreneurs and managers from Switzerland to come to Serbia or to get us there. After that, I moved to a Croatian startup in Belgrade. I met great people there. After that, I moved to a Serbian company that was bought later by foreigners, but I didn't stay there long. Then I moved to a Swiss startup again, to their Serbian branch in Belgrade. The salary was very good, which was the most important. I stayed there for almost three years. We had a client from Berlin, and that was my first connection with Berlin. We traveled a couple of times to Berlin. This is how I got to know it and I realized I liked it.
>
> (Predrag,[17] 38 years, team lead)

The interview shows a transnational nature of the tech sector in Serbia: most of the companies for which Predrag worked were foreign, with tech branches in Serbia. This excerpt also highlights the strong mobility of this tech professional: he stayed on average two years in each company.

The interviewee uses the words "cool," "I learned a lot," and "very interesting" for his professional experience in the tech sector in Serbia, words which are typically used in the startup culture (Flécher 2019). He also emphasizes the economic dimension of his jobs: he was earning a "very good salary."

The outsourcing aspect of the tech sector is highlighted by other interviewees:

> I worked for a startup making video games. The main firm was in Israel, and they bought a studio in Belgrade. The rest of my team were in Israel, but I never met them, even though we worked together for 2 years.
>
> (Nikola, 33 years, senior data scientist)

These two excerpts show contrasting experiences in the outsourcing sector. While the first one had a chance to meet his bosses from foreign companies and travel abroad and meet the clients, the second one worked for two years for a foreign company without meeting the rest of his team. This creates differences not only in their current work experience and skills but also in career aspirations.

Besides the economic capital, the interviews also highlight the accumulation of social capital, gained thanks to networks developed throughout these professional experiences. Typical of tech culture, social networks are developed in flat hierarchies:

> I started looking for a job in 2013, first in banking, but it was not interesting. I studied math and we had programming courses, so I applied for a Java developer position. That firm was a very dynamic startup, very young and flat-structured. Nobody had real experience. The CTO [chief technical officer] was 28 years old. We had a lot of space to experiment. It was a fantastic experience.

[17] Names of the interviewees are changed.

(Nikola, 33 years, senior data scientist)

This passage highlights the juvenile and flat hierarchy dimensions of the professional experience in the tech sector. The development of the startup sector in Serbia adopts the typical codes of the startup culture that value flat hierarchies (Berrebi Hoffmann 2016) and a "can do" and "maker" attitude (Berrebi Hoffman, Bureau, and Lallement, 2018). This turns out to be a useful set of skills both in the mastery of technologies and increased professional autonomy. It also creates a sense of social prestige because it differs from the rest of the Serbian economy, often criticized by skilled migrants for nepotism and corruption, which is also seen in the research on skilled migrants from Southern Europe (Triandafyllidou and Gropas 2014).

However, this bubble experience is also subject to changes. After some time, the majority of interviewees developed a sense of professional and personal limitations.

2.2 Sense of Professional and Personal Limitations

Despite the professional experience providing significant financial resources, interviewed professionals experienced what they call "frustration" and "limitation." The limitations were felt on a professional level:

> In Serbia, it is very difficult to progress in your career, not because Serbia is a bad environment for business, but simply because the business is not in Serbia. Headquarters are not in Serbia, it is mainly an outsourcing destination. Managers and bosses don't know the local people.
>
> (Miodrag, 37 years, senior software architect)

Contained to the tech departments of big foreign companies whose management is abroad, chances to progress inside the company are limited. This explains why tech professionals change their jobs so often. On the positive side, the interviewees explain that this frequent change of companies helped them learn new technologies, adapt to new environments, and constantly negotiate higher salaries. The lack of social mobility inside the company is compensated by acquiring economic and social capital and new skills.

Another structural problem is the size and maturity of the tech sector in Serbia. This is variable depending on particular sub-sectors.

> In some areas, like game development, there are people with 20 years of experience in Belgrade. I worked with some of them, in game design, and game development. You can learn a lot from them. But data took time to become attractive, mostly thanks to Facebook and Google. It took time to develop in Silicon Valley, and even more in Serbia. It arrived here in 2014 when I started working in that domain. I was alone in my startup doing that. Nobody was there to tell us that we would make errors. I had nobody to structure my work, or to give me career advice and orientation. It was frustrating that nobody was there to manage my expectations. I thought we were the only ones who were unable to do anything. I didn't know how to

> get resources, how to communicate my needs, how to create and expand the team. But I learned a lot, I was pushed into the fire.
>
> (Nikola, 33 years, senior data scientist)

The overall professional experience can be summarized as that of agency enhanced through the acquisition of new skills but constrained structurally. The agency of tech professionals faces at some point limits imposed by the economic structure of Serbian society and its position in the globalized economy. The sense of professional limitation is combined with more personal motives:

> Predrag: I always thought of going abroad, not necessarily to Germany. We were even learning Norwegian.
>
> Interviewer: What made you think about going abroad?
>
> Predrag: It was when I became a father. It made me think about the kind of society I want my kid to grow in. I wanted to give them options. I was lucky to fall in love with computers and IT, but I know many people who chose their field of studies strategically, to be able to find a job afterward. I wanted to give my kid an opportunity to lead the life he wants.
>
> (Predrag, 38 years, team lead)

This discursive strategy could be qualified as a transformative strategy analyzed by Triandafyllidou and Gropas in their research on Italian and Greek high-skilled emigrants (2014). They borrow the analytical framework of Meyer and Wodak (2009, 18) to analyze this discursive strategy, which brings considerations about the future as a key component of the decision to migrate.

Contrary to Greek and Italian migrants who left the country in the context of an important economic crisis, Serbian tech professionals experienced a privileged financial status and their country was not facing a major crisis comparable to the one in Greece and Italy. Although lagging considerably behind the EU economies, the Serbian economy was marking a slow but rather steady development.[18] The sense of frustration and limitation comes rather from political and social situations:

> When you work in the tech, you live in a bubble. I had a very good salary and a good quality of life, but I could not stand watching my friends who finished political science or philosophy and who were not able to earn decent salaries. At some point, you also realize that the high salary is not enough. You still breathe the same polluted air and face other injustices in society.
>
> (Darko, 35 years, senior developer)

The term "bubble" suggests not only that is disconnected from the rest of the society, but also its fragility in the context of the overall political and

[18] "GDP growth (annual %) – Serbia." World Bank Group. https://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG?locations=RS (Accessed December 6, 2024).

economic situation. Most of them expressed dissatisfaction with societal issues like freedom of media, rule of law, and ecological concerns. "Living in a bubble" is an experience of a relative privilege that results from the articulation of agency and structure. This shows the structural limits of economic privilege. It enables the agency of Serbian tech professionals, but it becomes relative when put in perspective with non-economic factors, such as aspirations for professional development (which is not only linked to a higher salary), or political and social constraints (Benson and O'Reilly 2009a).

The articulation between the agency of Serbian tech professionals and the structural limits of their professional and personal experiences prepares them for mobility. The mobility to the European Union is enabled by geographical proximity and exposure to the transnational networks of the startup sector. The interplay of local Serbian and foreign tech companies prepares the ground for the mobility of these professionals.

3. …to the International Bubble in Berlin: Restructuring the Privilege

International mobility is a project that aims to increase personal agency (Triandafyllidou and Gropas 2014). This section will focus on the labor mobility process from Serbia to Germany and on the professional experiences of these professionals in Berlin. It will show how labor mobility is governed by transnational professional networks of migrants, organizational practices of tech companies, and the legal framework of the EU Blue Card, and how they all enhance the sense of privilege of these professionals (part 3.1). It will then demonstrate how the agency of Serbian tech professionals has increased thanks to the local actors in Berlin, who strengthen the experience of working in an international bubble (part 3.2). The result is the restructuring of the privilege through the mobility from the "tech bubble" in Serbia to the international bubble in Berlin.

3.1 Role of Professional Transnational Networks in the EU Blue Card Application Process

The previous section showed the transnational ties between tech companies in Serbia and those in the rest of Europe. Interviews also show the importance of these transnational networks in organizing labor mobility. This is relevant early on, in the job application process, which consists of personal recommendations and a standard interview procedure:

> Predrag: In May 2017, I spoke to a friend who moved to Germany. He gave me some advice. I also spoke to my former boss who gave me a recommendation for a firm here in Berlin who were looking for a lead position. He

recommended me to check out the website berlinstartups.de. I applied for two positions. They called me from the first one and asked me: "When can you come for the interview? We will pay for your plane ticket." I came the following week. I came in the morning and went back to Serbia in the evening. I already knew Berlin, so it wasn't difficult to organize everything. The interviews lasted 6 hours. I had lunch with the CTO [chief technical officer], the HR [human resources], then I met the engineers, and we went through the whole project. By the end of the afternoon, the CTO brought me the contract with the offer. It was all too fast, I had to call my wife to discuss it because we had not completely decided yet. It was my first and only job interview in Berlin.

Interviewer: Were you happy with the offer?

Predrag: Yes, I was always very clear about my conditions before entering the whole process. If they are not able to afford me, why lose their and my time? I also have a small kid, so I was always clear on that as well.

(Predrag, 38 years, team lead)

A similar experience is shared by another interviewee:

Nikola: I wasn't actively looking for a job abroad, but it happened that in the same week, I got two calls from friends working abroad: one in Budapest and another in Berlin. They wanted to recommend me for a job opening in their firms. I applied for both positions, went through online tests, and did a case study. Then I got a call from Berlin: they invited me to come for a team day. It's their practice to see how applicants match with the rest of the team. They paid me the ticket and I went there. It was my first time in Berlin. And in the end, I got both jobs in Berlin and Budapest (laughing).

Interviewer: What made you choose Berlin?

Nikola: Well, I didn't know a lot about Berlin, but I always imagined Budapest as Belgrade where you speak Hungarian (*laugh*). Berlin seemed a bit more exotic.

(Nikola, 33 years, senior data scientist)

These extracts show the circulation of professional information in transnational networks. The job application process highlights the significance of informal transnational networks in providing professional opportunities. Such informal networks are not a new phenomenon. The role of the intermediary who gives a recommendation and useful information was also observed among "temporary migrants" in Western Germany during the Cold War (Penninx 2018). However, these networks of migrants from the former Yugoslavia and current networks of Serbian tech professionals are not connected. Such disconnection between networks of former migrants and current skilled migrants is also observed among Greek and Italian skilled emigrants (Triandafyllidou and Gropas 2014). The networks of Serbian tech professionals are mostly professional, they do not comprise "temporary migrants," but consist primarily of Serbian tech peers across Europe, who are also named by interviewees as friends.

The dominance of the professional component is also visible in the choice of the city. Berlin is a choice among other locations and is considered mainly for its job opportunities. However, as one of the interviewees points out, he chose Berlin over Budapest for its "exotic" side. It is an interesting blend of motivations that combines imaginaries of Berlin as an avant-garde place, chosen mostly by younger people (Terrein 2017), but also a destination for tech professionals.

The development of the tech sector in Berlin has been attracting Eastern European tech professionals who come to the city through the EU Blue Card scheme (Shmihelska 2020). The role of tech companies is crucial in this legal procedure and creates various experiences, ranging from a sense of privilege to frustration because of bureaucratic constraints:

> The Blue Card is a great thing. Germany understood how to attract engineers, that they don't want to go to the Immigration Service and be treated like refugees. It is a great thing they did with the Business Immigration Service. The building is like a space shuttle. I arrived 40 minutes before the appointment, they told me to go downstairs and have a coffee. They even had toys for kids. I was pleasantly surprised by the efficiency of the whole procedure.
>
> (Bojan, 35 years, senior developer)

Bojan displays a discourse of a privileged migrant that Germany is trying to "attract" by legal measures like the EU Blue Card. His discursive strategy is based on the opposition of categories of migrants: "engineers," who are desired and attracted by Germany, and "refugees," who are treated inadequately. Both categories of actors are subject to immigration policies, which constitutes the point of comparison. However, the procedure for skilled workers is carried out by the Business Immigration Service, whose mission is to "enable the quick and uncomplicated issuing of residence permits for entrepreneurs and qualified specialists."[19] The interviewee presents the overall procedure as very smooth and efficient, even agreeable due to the building of the Berlin Business Immigration office which is like a "space shuttle," where they serve "coffee" and have "toys for kids." However, this smooth process is not shared by all interviewees:

> It took me 5 months to get a visa appointment at the German embassy in Belgrade. Five months! You know why? Because everybody wants to leave Serbia and there are not enough employees in the embassy to process all the requests. Once I got the appointment, the visa was ready in 4 days. But it took 5 months to get there, I almost lost the job offer because of that.
>
> (Nikola, 33 years, senior data scientist)

[19] "Business Immigration Service." Berlin Partner Business Location Center. https://www.businesslocationcenter.de/en/our-services/bis-business-immigration-service (Accessed December 6, 2024).

The experience of this interviewee sheds light on a structural phenomenon of mobility from Serbia to Germany since 2014. The interviewee came to Berlin in 2017. This massive surge in visa requests cannot be explained only by the economic and political context of Serbia discussed above. What he presents as "everybody wants to leave Serbia" also relates to a pull factor from Germany. This country introduced specific measures for attracting medical workers from Serbia in the mid-2010s. Known as a "Triple Win," this program was organized jointly by the German Federal Office for Work (Bundesagentur für Arbeit), German Agency for International Cooperation (Deutsche Gesellschaft für Zusammenarbeit – GIZ), and the Serbian National Employment Agency. It aimed to attract medical workers (nurses and technicians) from several third countries, including Serbia.[20] A combination of transnational informal networks and extensive reporting by Serbian media led to a high number of Serbian medical workers moving to Germany, which prompted the Serbian government to leave this program in 2020. Despite this measure, Serbia was still the top provider of medical workers to Germany in 2021.[21] Put in perspective with this measure, the EU Blue Card initiative has served as an attractor for many tech professionals from third countries (Shmihelska 2020; Faist, Aksakal, and Schmidt 2017). Although the EU Blue Card is issued by the immigration offices in Germany, skilled applicants first must obtain an entry visa at the German embassy in Belgrade. Its processing is deemed a priority compared to other types of visas, but the overall high number of visa requests slowed down the issuing of the EU Blue Card as well. The EU Blue Card scheme is therefore confronted with the structural constraints of the immigration process.

It strengthens the contrast between the agency enhanced by professional networks and the legal structure: the whole job application process with the tech company in Berlin is presented by interviewees as "fast" and "straightforward," but it is constrained in some cases by the bureaucratic slowness of the visa application in the German embassy in Serbia.

The interplay between formal and informal actors in the mobility process is also visible at the arrival, mostly in the housing search. Two cases are observed: personal networks and the help of the company.

> I found a flat easily. I was recommended by a friend of a friend. The owners liked me, they asked me only for my contract and visa, not even Schufa. I consider it to be good karma for the 5 months I had to wait for the visa (*laugh*).

[20] "Sustainable recruitment of nurses (Triple Win)." Deutsche Gesellschaft für Zusammenarbeit (GIZ) GmbH. https://www.giz.de/en/worldwide/41533.html (Accessed December 6, 2024). Serbia is not on the current list of participants because the Serbian government left the program in 2020.

[21] "Serbia is second in terms of the number of medical personnel arriving." Deutsche Welle. April 27, 2021. https://www.dw.com/sr/nema%C4%8Dka-srbija-druga-po-broju-pristiglog-medicinskog-osoblja/a-57347651 (Accessed December 4, 2024).

(Nikola, 33 years, senior data scientist)

The human resources departments of the employers also play a significant role in the first steps:

> The company helped us with the flat search, with the kindergarten, with all the administration stuff that had to be done in German.
>
> (Bojan, 35 years, senior developer)

The first example shows the importance of personal networks in enhancing the agency of Serbian tech professionals. The second interview highlights the role of organizations in producing mobility: big companies help with administrative affairs and often cover the costs of temporary accommodation. This combination of personal and professional resources is instrumental in the smooth installation. It contrasts with the experiences of foreign workers who faced various forms of discrimination during their mobility process (Chakravartty 2006). These networks and organizational practices also strengthen the sense of staying in the bubble. However, the bubble is restructured: it is reshaped by networks and actors specific to the context of Berlin. Agency of Serbian tech professionals and their sense of privilege is enhanced through the EU Blue Card mobility process and their professional experience in Berlin.

3.2 From "Professionals" to "Managers": Experiences of Upward Professional Mobility in an International Setting

The sense of living in an international bubble is related to the professional experience of Serbian tech professionals. Since their arrival, most interviewees got promotions in the same company or several companies. At the time of the interviews, two thirds of them occupied senior professional or management positions in tech-related fields in big companies, such as *senior developer, team lead, head of engineering, head of data,* or *director of engineering.*

> I applied for and got the lead position. When I came here, I got promoted after 4 months, my team grew, we got a bigger office. The startup got a big investment, we moved to a bigger building. It is very different once you come to Germany. That is the main difference between Germany and Serbia. You can get promoted because the company is bigger.
>
> (Rade, 38 years, team lead)

This illustrates professional mobility which is enabled by the local context: thanks to a big investment, the company can expand the team and offices. The interviewee also suggests that such a thing would not be possible in Serbia because of the constraints analyzed above. However, this experience was not straightforward for everyone, especially not for those who came to Berlin without management experience.

> Germany was a kind of cold shower for me. It's not that I was not good, but I realized that I somehow overestimated my qualities. It's not so much about tech skills, it's more about the human side, about working in a bigger team. It was the first time I could really interact with people from other departments, negotiate things, give and receive feedback in a much bigger environment. It was also the first time I could get some career advice and career orientation from people who are trained to be managers. It's just easier since it is a big market. It was great for developing social skills, especially management skills.
>
> (Nikola, 33 years, senior data scientist)

The experience of this interviewee suggests the importance of professional development which served as one of the motives for mobility. It also highlights the question of skills needed to evolve in the international tech setting. Technical skills are the basis for the obtention of the EU Blue Card since tech professionals are considered as a "scarce profession." However, the goal of most interviewees is to increase their general management skills and experiences, which was deemed not possible in Serbia.

This also raises the question of the transfer of qualifications and skills. In her article on Romanian and Hungarian professionals in London in the 2000s, Csedö (2008) makes a difference between *qualifications*, earned through a degree, and *skills*, negotiated in a professional setting. According to Csedö, upward mobility depends on the capacity of professionals to convert their *qualifications* to *skills*. The case of Serbian tech professionals seems to present an example of a successful conversion, which is visible through frequent promotions that most of the interviewees had. How to explain this successful conversion of qualification to skill?

A part of the explanation can lie in the fact that they all came to Germany with *skills* and experience earned in the tech sector in Serbia, which compensates for a relative lack of international reputation of their qualifications, obtained mostly at the University of Belgrade and other universities in Serbia. Another part of the explanation of upward mobility lies in the local context of the tech sector of Berlin which hires a high number of foreign tech professionals and enhances the experience of living and working in an international bubble. The development of the tech sector in Berlin, encouraged by local authorities, followed a specific logic. There are two reasons for this: Berlin's specific position in the federal context and the city's recent history. The city is not a place where economic and financial capital is concentrated (Brenke 2017).

As a result of its recent history as a divided and then united city, Berlin benefits from a plurality of perceptions and narratives that contribute to the experience of "living in a bubble." The period after the fall of the Berlin Wall saw the creation of the narrative "poor but sexy" city, in the words of Klaus Wowereit, former mayor of Berlin. It referred mostly to the narrative of a cheap city that attracts young people in search of partying (Boichot 2017), particularly that associated with techno music (Terrein 2017). These narratives

are still conveyed by the press and found in the interviews that I conducted with institutional players, representatives of support structures, and entrepreneurs in Berlin. Another group of imaginaries is linked to Berlin as a global city (Krätke 2001; Eckardt 2006), cultural metropolis (Grésillon 2002), and a city of artists (Marguin 2017). These imaginaries can be explained by the high concentration of higher education institutions in the city (Brenke 2017) and alternative spaces for the production of contemporary art (Marguin 2017) and music (Picaud 2021). As such, Berlin is a lifestyle destination (Griffiths and Maile 2014).

These narratives were fostered and used by local authorities to attract skilled workers. Berlin enjoys a special status in Germany's federal organization, that of a city-state. As a result, public and urban policies are taken by the Berlin Senate, the executive body, which has set itself the task of upgrading the image of the city after the fall of the Wall. The two groups of imaginaries were united under the slogan "Berlin – Creative City," an appellation used by the Berlin Senate to promote the city internationally (Brenke 2013; Boichot 2017). This appellation refers to the strong presence of so-called "creative" professions in the 2000s, particularly freelance marketing and design workers, attracted by the city's low cost of living and abundance of cultural and artistic initiatives in the city (Boichot 2017). The "creative class" was advocated in the early 21st century as a global solution to urban revitalization (Florida 2002). The idea is that the presence and activity of the "creative class" would give a new dynamic to urban development. This proposition has been adopted by the Berlin Senate, which focuses its activities on urban marketing and networking. Although we hear less about the "creative city" nowadays, the Berlin Senate is still concentrating its efforts on the promotion of the city, with the new watchwords of "innovation" and "international attractivity." Thus, in the mid-2010s, the "creative city" gave way to the "tech city," a term still in use to this day.

The Senate is supported in this effort by the Berlin Partner Agency for Economy and Technology (Berlin Partner für Wirtschaft und Technologie), a public-private organization responsible for promoting the city and establishing partnerships with local and foreign entities.

Figure 1 Promotion of Berlin by the Berlin Partner for Business and Technology Agency

Promotional material from the Berlin Partner agency, which presents the city as "an ideal place for innovation," "number 1 for talent from all over the world," and "a city that has evolved from the city of the wall to the world city."

Interviews organized with the heads of different portfolios at the Berlin Partner agency provided an opportunity to hear first-hand the representations of Berlin as a "world city" and of the city's evolution into the "tech capital" which attracts a high number of foreign tech professionals. The interviews also highlighted the role of this agency in providing help to tech companies with visa procedures for their foreign workers and other local administrative tasks.

The tech sector in Berlin receives institutional support. The Startup Unit was created in 2015 by the State of Berlin, gathering several institutions, such as Berlin Investment Bank, Berlin Partner agency, and the Berlin Senate. In 2017, the Berlin Senate created a specific position for a "start-up affairs officer," who acts as an intermediary between the administration and the tech ecosystem. The active public and political promotion of the tech sector on the local level conveys a sense of professional prestige to tech professionals in Berlin. Coupled with the largely promoted discourse on the lack of tech talent, it also creates an experience of extensive professional opportunities and restructures the sense of living in the international bubble, where mastery of the local language is not needed.

Experiences of Serbian tech professionals in Berlin can be summarized as reshaping the bubble. The mobility process enabled by the EU Blue Card helps in moving from the Serbian tech bubble to a bigger one that offers more professional opportunities and remains loosely connected to the local context of the host country. This disconnection is also visible in their experience of the local context.

4. Between Privilege and Limitation: Living in a Transnational Bubble

If the labor mobility of Serbian tech professionals is mostly a case of upward mobility made possible by the EU Blue Card scheme and the international professional environment in Berlin, their agency is also shaped by their personal networks. This section will focus on the private dimension of the mobility experience of Serbian tech professionals in Berlin. It will highlight a changing identity that results from the complex articulation between economic privilege and "expat" experience in Berlin on the one hand (part 4.1) and permanent, though limited integration into German society, and transnational social ties with Serbia on the other hand (part 4.2).

4.1 Skilled Migrant as a Shifting Category Enabled by the Local Context

Agency gained through the professional experience analyzed in the previous section confers a sense of privilege, both in economic and social terms. In administrative terms, the constraints of the mobility experience from a third country seem neutralized by the transition from the EU Blue Card to the permanent residence permit that most of the interviewees accomplished. This results in a sense of "easiness" shared by several professionals:

> Ivana: It is so easy to be a foreigner in Berlin. I say Berlin, not Germany.
>
> Interviewer: What makes Berlin different from the rest of Germany?
>
> Ivana: I think it's because everybody comes from somewhere else. My German colleagues complain that sometimes they cannot order a drink in German because the waiter doesn't speak German.
>
> (Ivana, 34 years, senior software engineer)

This international aspect is shared also by professionals with families:

> Goran: It is so international. In the kindergarten, there are kids from everywhere: Europe, South America, Africa. It's fantastic.
>
> Interviewer: What do you like about it?
>
> Goran: I like that it is so diverse. It gives a sense of openness and freedom.
>
> (Goran, 38 years, head of engineering)

The discourse valuing *freedom* and *openness* is quite close to the official discourse found in the promotional material produced by Berlin Partner and other local institutions. In that sense, tech professionals are ambassadors of the "creative class" who incarnate and reproduce the discourse.

Knowledge of German is another topic frequently mentioned in interviews. Most of the interviewees work in English and have limited knowledge

of German, but do not find the knowledge of German necessary for their work:

> My first team was very international. Out of 15 people, there were only three Germans. Others were from Russia, Indonesia, France, Cuba, and Greece. Everything was done in English. You don't really need German to work in tech.
>
> (Dragan, 32 years, software engineer)

The experience of living in a bubble is directly linked to their capacity to create their professional and personal networks in English. The sense of easiness and privilege is strengthened by the local context in which tech professionals have comfortable incomes. The professionals I met had a gross average annual income of 90,000 euros and lived in central and gentrified areas like Mitte, Prenzlauer Berg, Kreuzberg, or Friedrichshain (Bocquet and Laborier 2017).

> I am aware that I contribute to the gentrification and I am not happy about it. I know that I indirectly contribute to kicking local Berliners out. I am also frustrated that my German is not good enough to follow local media, engage in public debate, or fully enjoy local experiences, like going to theatre.
>
> (Petar, 31 years, data scientist)

The discourse held by this interviewee highlights the bubble experience, as he opposes himself to "local Berliners." His display of international capital (Wagner 1998) has a financial component (mentioning the gentrification trend to which he contributes thanks to his economic means), but also contains a cultural dimension, by comparing cultural practices that he had in Serbia, but abandoned in Berlin (like going to theatre).

The experience of Berlin can be distinguished according to their family status. Single professionals, both men and women (all women from the sample are single), share discourses of Berlin which are very close to the ones formulated by lifestyle migrants (for instance, British lifestyle migrants analyzed in Griffiths and Maile 2014). They insist on "freedom," "relaxed atmosphere," "space," and "cheap life." The discourse diverges slightly for those who came with families. Although they appreciate the sense of freedom in the city, some of them are concerned about the values they would transmit to their children (one interviewee gave an example of socially accepted nudity in a public space as something disturbing).

The discourse on creative classes is adopted by some of the interviewees who speak of themselves in such terms and explain their private networks being made of "artists" and "freelancers." Some of them point out that Berlin is "not a place where people come to have a 9 to 5 job":

> I think most of the people here come for lifestyle. Berlin is more relaxed because of its space. People are relaxed. Berlin is a city for single people, a freelance and creative city. It's cheap. There are many freelancers, people

> come here not to work from 9 to 5. They come here for the community, for the nightlife. It's a city for hedonism.
>
> (Milan, 36 years, head of engineering)

This discourse is also quite representative of the official discourse of Berlin institutions analyzed above. Serbian tech professionals reproduce some of these narratives and embrace the codes of the "creative class" (Florida 2002). This is particularly visible among single professionals who display a lifestyle focused on "cultural consumption" (Benson and Osbaldiston 2014): museums, concerts, and frequent trips around Germany and Europe, as well as frequent trips to Serbia. Those with families organize their lives around the school activities of their children. Therefore, the experience of Berlin is defined not by the administrative immigration framework, but by their private status. This creates two types of narratives of Berlin: the first is associated with *cultural consumption* and *partying* (*music, arts, nightlife*), whereas the second one is closer to experiences of nature (*green parks, space, lakes).*

The nature of these experiences, centered on the practice of a particular lifestyle and well-being, echoes the writings on lifestyle migrants who choose particular destinations for a better quality of life. What makes the experience of Serbian tech professionals specific compared to this literature is their social ties with Germany and Serbia.

4.2 "I am not an Economic, but an Ideological Refugee": A Sense of Detachment despite the Permanent Settlement in Germany

The sense of living in an international bubble also structurally highlights their limited ties with Germany. Despite their permanent residence, most Serbian tech professionals have limited personal relationships with the Germans. They explain it by insufficient knowledge of German (B1 level for most of them) and the fact that "Germans are reserved." Limited integration is also felt by those whose spouses were not able to find a job equivalent to the one they left in Serbia:

> My wife had a really good corporate job in Serbia. When we came here, she was the one to take care of the child and learn many things on her own. It is frustrating for her that she put her career a bit aside.
>
> (Žarko, 36 years, team lead)

Some of them, despite the upward mobility, also perceive structural constraints:

> Germany is much more a class society than Serbia. The C-level in the company are mostly German. It's not just the fact that they are German, it's more about going to the right schools and knowing the right people. And you don't get it if you come from the University of Belgrade. I mean, I know the value of my diploma, but I also know that I don't have the social network of those who studied in more prestigious universities.

(Milena, 33 years, senior developer)

Research on Silicon Valley highlighted that Chinese and Indian tech professionals in this region believed that they were subject to a glass ceiling because of their race (Saxenian 2002). That belief was supported by the survey done by the association Asian Americans for Community Involvement (AACI) in 1993 which showed that Indians and Chinese in Silicon Valley were more represented in professional than in managerial positions (Saxenian 2002). That survey also suggested that these foreign professionals perceived a glass ceiling due to an "old boys' network that excludes Asians" (AACI 1993; reference found in Saxenian 2002). Although Serbian tech professionals in Berlin do not perceive the glass ceiling to access management positions, some of them do perceive that top management positions are held by networks of Germans who went to the "right schools," mostly prestigious universities and business schools in the west of Germany, Switzerland, the United Kingdom, and the United States. The research done by Deutsche Startups, a federal association producing research on tech sectors in Germany, tends to corroborate these perceptions (Kollmann et al. 2020).

Some of them also sense professional frustration that they explain by "cultural differences":

> Germans like to limit their work, they work only how much they are paid. At some point it becomes frustrating, it's quite different from Serbia where we hustle more, we have this "can do it" mentality.
>
> (Mirko, 38 years, lead engineer)

This discursive strategy on the differences between the local population and the entrepreneurial spirit of foreign professionals serves not only to value the particular mindset and "can do" attitude of Serbian tech professionals but also to justify the transition from professional to entrepreneurial path, that some of these professionals consider.

The sense of structural limitation is compensated by the development of strong transnational social ties, mostly with Serbia. This is visible not only through their regular contact with their families and friends in their home country but also through frequent trips and extended stays in Serbia enabled by the remote work in their companies. Most of them vote regularly in elections organized in the Serbian embassy in Berlin, they follow Serbian media, and they comment regularly on local issues on their social media. One of them summarizes it in the following way:

> I am not an economic, but an ideological refugee.
>
> (Nikola, 33 years, senior data scientist)

The use of the word "refugee" is a statement: most of them deplore the political situation in Serbia and leave the country, but they remain involved transnationally. Like skilled emigrants from Southern Europe, they "vote with

their feet" (Triandafyllidou and Gropas 2014) but remain active Serbian citizens abroad.

This transnational Serbian identity is performed through their private networks mostly made of foreigners and other Serbs:

> I spend time with people from ex-Yugoslavia, the Balkans in general, also Greece, France. It is just easier with "Yugo-people." It's the same language, same culture, same mentality.
>
> (Vuk, 34 years, security expert)

The term "Yugo" is used for the population from former Yugoslavia, mostly temporary workers. However, in this context, they use it for compatriots of similar status (tech professionals). Interviewees make a clear distinction between them and other categories of migrants from Serbia:

> I didn't come here for economic reasons. I came here out of dignity.
>
> (Nebojša, 42 years, director of engineering)

This creates the basis of a new identity, which combines professional and economic privilege, as well as the prestige associated with their careers in a "European tech capital." They participate in Serbian startup events and conferences, where they can capitalize on their Berliner experience. Some of them also follow the development of the tech sector in Serbia and are critical of the government's initiatives in attracting back the Serbian migrants:

> The Prime Minister called us to return and promised economic incentives. No, Madame, I don't need credits to return to Serbia, I know how to make money. I need the rule of law, I need the freedom of media, I need the fight against corruption, I need the protection of the environment and better quality of air.
>
> (Branka, 34 years, data scientist)

The limited contact with Germany is also reflected in the level of involvement in local issues. Most of the interviewees, especially those without families, feel quite detached from the issues debated in Germany, calling them "prevention problems" and not "survival problems."

The transnational bubble structured by the local context of Berlin, permanent residence in Germany, and transnational ties creates a *home* where a new *self* can be developed:

> On a kind of personal quest, life-style migrants seek places of refuge that they can call home and that they believe will resonate with idealized visions of self [...] the "potential self." Life-style migration concerns individuals and families who choose relocation as a way of redefining themselves in the reordering of work, family, and personal priorities as they seek a kind of personal moral reorientation to questions of the good. (Hoey 2005, 593)

We can see in these interviews a combination of motives cherishing lifestyle issues, together with moral and political imperatives. Lifestyle becomes not only a moral and social expression but a political one as well.

5. Conclusion

This article explored the impact of European institutional policies designed to attract skilled workers from non-EU countries in the "global competition for talents." The analysis of the mobility of Serbian tech professionals to Berlin through the EU Blue Card scheme offered insights into migration from a third country to a major European member state.

Firstly, the scheme exemplifies multilayered governance. Established by European and German institutions, its everyday implementation involves private actors (tech companies in Berlin and Serbia) and transnational networks of Serbian tech professionals. This highlights the growing role of non-state actors like tech companies and individuals in shaping EU labor mobility.

Secondly, the article sheds light on the specific mobility motives and experiences of Serbian tech professionals in Berlin, a social group often overlooked in sociological research despite its empirical significance. It demonstrates how structural conditions in Serbia and Germany, coupled with the agency of these actors, create a specific context that these professionals describe as a bubble.

This bubble continuously shapes due to the interplay of the legal framework, company practices, and the resources of Serbian tech professionals. They move from the tech bubble in Serbia to the international bubble in Berlin, ultimately creating a transnational bubble that combines their local professional lives in Berlin with transnational social ties to Serbia. However, this bubble remains fragile due to their limited ties with German society.

Consequently, these professionals develop a sense of identity structured around their professional skills, international lifestyle in Berlin, and transnational networks. Their tech skills and financial resources confer a relative privilege compared to the local population – financial, not legal, as they remain foreigners with weaker passports than citizens of the destination country. This case offers a valuable contribution to research on privileged migration, which has traditionally focused on foreigners with strong passports.

What happens next? Is the EU Blue Card a steppingstone for further intra-EU mobility? Potentially. Despite permanent residence, these professionals feel detached from Germany, and some express a desire to move to other EU countries. Those without children already spend extended winters working remotely in Italy, Spain, Portugal, or Malta, a practice common among their EU colleagues. The EU Blue Card scheme, combined with Berlin's socio-economic context, seems to neutralize the differences between tech professionals from third countries and EU citizens. The example of Serbian tech professionals' mobility enabled by the EU Blue Card is associated with the sense of "easiness," "straightforwardness," and a desire for professional development and new experiences – characteristics previously associated with research on

intra-EU mobility (Favell 2008b; Triandafyllidou and Gropas 2014). Beyond the initial visa application process, their mobility experience appears smooth and similar to intra-EU mobility. We might conclude that EU Blue Card governance contributes to the emergence of a new migrant category – a hybrid of labor and lifestyle migrants.

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From Student Mobility to Labor Immigration: Professional Trajectories and "Paper Careers" of Moroccan Graduates in France

Hicham Jamid *

Abstract: *»Von der Studentenmobilität zur Arbeitsmigration: Berufslaufbahnen und ‚Papierkarrieren' marokkanischer Hochschulabsolventen in Frankreich«.* From the application for a long-stay student visa to the submission of a legal status change request at the prefecture, this article traces the "paper careers" of Moroccan engineers and managers who graduated in France and chose to stay and work there. Despite holding advanced degrees and fitting the profiles sought after for so-called "shortage occupations" characterized by a lack of qualified labor, the professional integration of these highly skilled migrants into the French job market remains uncertain and far from guaranteed. Delays in obtaining residence permits or work authorizations often deprive them of opportunities matching their qualifications, keeping them in precarious employment situations. These administrative obstacles hinder their labor market integration, limit their mobility, and restrict their ability to advance into skilled jobs.

Keywords: Foreign students, highly skilled workers, residence permit, France.

1. Introduction

France is the sixth largest global destination and the third largest in Europe, after the United Kingdom and Germany, for hosting international students each year (Campus France April 2024). According to data from the Ministry of Higher Education and Research, 310,800 international students were enrolled in French higher education institutions during the 2022–2023 academic year, accounting for 11% of the total student population (SIES March 2024). In 2022, 102,130 first residence permits were issued for "education-related reasons" (Direction générale des étrangers en France 2024, 2). However, with the introduction of the "Bienvenue en France-Choose France" strategy in 2020, tuition fees for students from outside the European Union were sharply

* Hicham Jamid, Laboratoire Population Environnement Développement (IRD), Aix-Marseille Université Centre St Charles - case 10, 3 place Victor Hugo, 13331, cedex 03, Marseille, France; hichamjmd@gmail.com; ORCID iD: 0000-0001-8358-1725.

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increased: 2,770 euros for a bachelor's degree (up from 170 euros) and 3,770 euros for a master's degree (up from 243 euros). These fees are now 16 times higher than those applied to European students, who continue to pay the same rates as national students. This discriminatory strategy of "selection by money" (Jamid et al. 2020; Bréant and Jamid 2019), combined with the travel restrictions imposed during the COVID-19 crisis, resulted in a significant drop in the number of international students. For the 2020–2021 academic year, for example, there was a 25% decrease compared to the previous year (Campus France April 2024).

Foreign students in France are not a homogeneous population. This contribution aims to enhance our understanding of the experiences of students from non-European Union countries, with a particular focus on Morocco. For several decades, Moroccan students have constituted the largest group of international students in France (Jamid 2021). According to data from the Ministry of Higher Education, Research, and Innovation, of the 310,800 international students enrolled in various French higher education institutions during the 2022–2023 academic year, Moroccans topped the list (45,168 students), followed by Algerians (32,147 students) and Chinese students (25,606 students) (SIES March 2024).

Like other international students from non-European Union countries, Moroccan students are subject to the procedures for applying for a "student" visa. Upon completion of their studies, they must initiate an administrative process for "status change" if they wish to work and reside legally in France. While these international students are often regarded as "desirable candidates" in the context of "chosen immigration," they are nonetheless treated like any other foreign national from a country subject to the Schengen visa regime, perpetually suspected of being or becoming legally irregular (Jamid 2018; Spire 2009).

This article examines how legal regulations regarding residency influence the educational and professional projects of students from non-European Union countries, employing the concept of "paper careers."[1] According to Alexis Spire (2005, 300), a paper career refers to

> all the successive statuses acquired by a foreigner during his or her stay in France [...]. Beyond the sequence of residence permits, each paper career is part of a process of permanent redefinition of the foreigner's status over time, determined both by the decisions taken by the administration and by the strategic changes these decisions trigger [author's translations].

The article begins by examining the administrative procedures necessary to obtain a residence permit designated for "students." It then delves into the complexities of the "status change" process that graduates encounter when they opt to remain in France for employment. The final section is based on

[1] The concept of "paper careers" has been used to define all the successive legal statuses acquired by the foreigner during his/her residence in France.

an analysis of 40 biographical interviews conducted in Paris with Moroccan graduates who studied in France between 2008 and 2018. At the time of the interviews, these individuals held positions as engineers or managers in the finance and information and communication technology sectors. This final section presents the experiences of these highly skilled workers in light of their "paper careers" in France.

2. Applying for a Student Visa: An Administrative Marathon

In the context of higher education liberalization and intensified competition among developed nations to attract international students, France established the ÉduFrance agency in 1998. This initiative marks a significant shift in France's policy toward the reception of foreign students. The agency's objectives are twofold: first, to enhance France's competitiveness in the global higher education market; and second, to establish a rigorous selection process for foreign students that aligns with the economic needs of the country. This selection process also aims to limit the entry of students perceived as "undesirable" or "fraudulent" who may pose a risk of remaining in France unlawfully (Jamid 2022; Spire 2009; Slama 1999).

In 2005, ÉduFrance was succeeded by the Centres pour les Études en France (CEF). Established within several French embassies abroad, the CEF emerged as a new regulatory instrument designed to more effectively select and filter foreign students aspiring to continue their education in France. This initiative arose in a context where France, under the leadership of Nicolas Sarkozy, then Minister of the Interior in a conservative government, sought to implement a model of "chosen immigration" rather than "imposed immigration" (Héran 2007). As a result, engagement with this administrative framework became mandatory. Five years later, the CEF was replaced by Campus France, a public establishment with an industrial and commercial character functioning under the joint oversight of the Ministry of Foreign Affairs and the Ministry of Higher Education. With a global network of over 200 offices and branches, Campus France has been responsible since 2010 for managing the arrival of non-European Union students in France.

In order to apply for higher education in France, foreign students are required to utilize the digital platform *Études en France,* which is managed by Campus France. The application process, known as the "Demande d' Admission Préalable (DAP)," entails the payment of a fee that varies depending on

the candidate's country of origin.[2] Applicants must first create an account on the Études en France platform, followed by the completion of an educational dossier that includes personal information and documentation of their academic qualifications. They may then indicate up to seven preferred institutions where they wish to continue their studies in France. Additionally, candidates must provide a certificate verifying their proficiency in French, which can be obtained by taking the so-called "Test de Connaissance du Français" (TCF), which also carries a fee, or by presenting an equivalent diploma.

The next step entails a personal interview with an agent of Campus France, whose role is to verify the authenticity of the documents submitted by the candidate, assess their level of French proficiency, and ensure the viability of the candidate's educational project. Following this interview, the Campus France agent issues an opinion. If the opinion is favorable, the candidate's dossier is forwarded to the selected institutions. Should one of these institutions also provide a positive assessment, the candidate must then confirm their choice and initiate the procedure for obtaining a long-stay visa for studies in France. In order to obtain this type of visa, any student without a scholarship must provide a bank statement demonstrating a permanent and irrevocable transfer order of a minimum amount equivalent to 615 euros per month for one year, which totals 7,380 euros. To apply for a long-stay student visa in France, a Moroccan student must have saved the equivalent of two years' minimum salary, which constitutes a substantial sum.

Several measures have been introduced to reduce the administrative burden. For example, since 2009, foreign students from outside the Schengen area have been granted a so-called "visa long séjour dispensant de titre de séjour" (VLS-TS; a long-stay visa dispensing with residence permit) for their first entry into France.[3] This visa exempts foreign students from the bureaucratic procedures at the prefecture that are required to obtain a residence permit for their first year of stay in France. However, it is still necessary for them to register with the French Office for Immigration and Integration (OFII) in their department of residence within three months of their arrival. In the two months preceding the expiration of their visa, foreign students holding a VLS-TS must apply for a temporary residence card labeled "student." This card is granted to "foreigners who demonstrate that they are pursuing education in France and who prove that they have sufficient means of subsistence" (CESEDA), amounting to 615 euros per month.

Previously, foreign students from non-European Union countries were required to appear annually at prefectural offices to renew their student

[2] For example, for Senegalese applicants, the fee is 50,000 FCFA (approximately 75 euros); for Turkish students, it is 430 LT (approximately 98 euros), while for Moroccan students, it amounts to 1,900 dirhams (approximately 172 euros).

[3] This procedure was instituted by Decree No. 2009-477 on April 27, 2009, which took effect on June 1, 2009, introducing new regulations for visas exceeding three months (Décret 2009-477).

residence permits until the completion of their academic studies. However, following a reform of the *Code on the Entry and Stay of Foreigners and the Right to Asylum* (CESEDA) in 2006, the French government introduced a so-called "legislative opening" aimed at relaxing and simplifying certain administrative procedures for international students (Article L.422-1 of the CESEDA). This reform specifically applies to those foreign students who have held a student residence permit for at least one year and "who have been admitted to a nationally accredited higher education institution to pursue a program leading to a degree that is at least equivalent to a master's degree" (2nd paragraph, Article L313-4, Loi 2006-911 du 24 juillet 2006; author's translation). These students are now permitted to apply for a multi-year residence card at the time of their residence permit's expiration and renewal, with a validity period that can exceed one year but must not surpass four years.

However, the revision of the foreign nationals' law enacted by Law No. 2016-274, March 7, 2016, introduced new legislative provisions specifically designed for international students and researchers (Loi 2016-274). One of the most significant measures resulting from this revision is the extension of the multi-year residence permit to all foreign students. Consequently, the multi-year card is no longer exclusive to those enrolled in master's or doctoral programs; it is now accessible to all levels of study. The duration of this card is

> equal to the remaining duration of the study program in which the student is enrolled, provided that the studies are genuine and serious, as assessed based on the documentation provided by the educational institutions and the individual. (Article L.311-4 CESEDA; author's translation)

3. Change of Status: The Experience of Disenchantment

Upon completing their studies, some international students receive job offers in France and decide to settle there. This decision exposes them to a new "paper career," which is as lengthy and complex as the previous ones. In order for an international student to be legally permitted to reside in France after completing their higher education and take up paid employment, they are required to undergo an administrative procedure known as the "change of status." This process allows the individual to transition from a "student" status to that of a "salaried" one. The administrative procedure entails the participation of both the international student and their employer, who may be subject to the requirement of "opposability of the employment,"[4] as evaluated

[4] Under French legislation (notably Article R.5221-1 of the Labor Code), for a foreigner to work with a "salaried" status, he or she must hold a work permit (which can be refused by the authorities if they consider that the level of unemployment in the job in question is high), and the employer is required to justify that in the geographical area where the application is made,

by the foreign labor department of the Regional Directorate for Enterprises, Competition, Consumption, Labor, and Employment (DIRECCTE). Among the conditions verified by DIRECCTE agents, the job proposed to the foreign student who initiates the administrative procedure to change status must align with the training they have received and the degree they have obtained. This "change of status" process reflects the policy of restricting the right to work for foreigners, and the bureaucratic domination of the administration dedicated to managing immigration (Laurens 2009; Spire 2009, 2017). Once all the necessary conditions have been fulfilled and the required documents provided, the foreign student is eligible for a residence permit labelled as "salaried" when the employment contract is open-ended, or for a permit labelled as "temporary worker" when the contract is fixed term.

However, when a foreign student is unable to obtain a work contract after completing their higher education and chooses to remain in France, they may apply for a so-called "Temporary Residence Permit - Autorisation provisoire de séjour" (APS). This measure was first introduced by the law of July 24, 2006, on "Immigration and Integration," also known as the "Sarkozy Law," which made several amendments to the CESEDA. Foreign students who have obtained a French degree equivalent to at least a master's level are eligible to apply for a free, non-renewable APS valid for a period of six months. This permit allows them to "complete their training with initial professional experience contributing directly or indirectly to the economic development of France and the country of which they are a national" (Article L.311-11 CESEDA; author's translation).

Based on this law, on May 31, 2011, a circular co-signed by the Ministers of the Interior and Labor, known as the "Guéant circular," was sent to the prefects of France's regions and departments to "control professional immigration" (Circulaire IOCL1115117J). More specifically, the circular sought to tighten control over the "status change" process initiated by foreign graduates from countries outside the European Union. The circular reminded prefects once again to ensure that foreign students holding an APS could only take up employment in France if their work constituted "a first professional experience aligned with a plan to return to the country of origin" (Circulaire IOCL1115117J; author's translation).

Widely contested, the "Guéant circular" sparked great indignation among foreign students, but also in academic, political, and professional circles (Gardelle et al. 2016). A year after its publication, the circular was repealed during François Hollande's presidential term in 2012. Subsequently, on July 22, 2013, the government passed a law on higher education and research, which introduced several regulatory advancements in favor of foreign

there is no satisfactory application from a national candidate, after widely publicizing the job offer for at least two months.

students (Loi 2013-660).[5] As a result of this new law, the duration of the provisional residence permit (APS) was extended from six months to one year, the requirement for a "return to the country of origin" was eliminated, and "first professional experience" was no longer restricted to a single job or employer, provided that the position offered aligns with the degree obtained.

To assess the impact of legal provisions concerning residency on graduates from non-European Union countries, the following section examines several "paper careers" of Moroccan graduates in France. These individuals, currently employed as engineers and managers at the time of the field study, exemplify the manner in which regulations pertaining to residency and the rights of foreign workers shape their professional trajectories and integration into the French labor market.

4. Professional Trajectories of Moroccan Engineers and Managers Graduating in France Regarding their "Paper Career"

Given the training they received and the types of positions they were intended for, all the Moroccan engineers and managers interviewed in this study report having benefited from relatively rapid professional integration in France. Several were even recruited by the company where they completed their final internship. However, many of them immediately mention the administrative process of "status change" as the main obstacle that hindered their entry into the French job market. The complexity, financial cost, and length of this administrative procedure make it a significant challenge. Math et al. (2006, 34) describe this process as "a true perilous adventure with an uncertain outcome." Foreign graduates not only risk losing their residency rights, but also devote significant time and resources to the process, potentially missing out on key professional opportunities. The analysis of biographical interviews conducted with Moroccan engineers and executives who graduated in France highlights the considerable impact of transitioning from a "student" residence permit to a "salaried" status on their migration and career trajectories. The discourse analysis of these highly qualified workers reveals how their experiences are shaped by the social resources they possessed prior to emigration, as well as by the type of higher education institutions they attended in France.

[5] Articles 86 and 109 of this law (Loi 2013-660) introduced changes that also affect the CESEDA, in particular paragraphs 4, 8 and 11 of Article L.311-11.

Jalil[6] is one of the Moroccan engineers for whom the "status change" procedure was a challenging ordeal. Son of a retired Moroccan army father and a nurse mother, Jalil arrived in France in 2012 after completing two years of preparatory classes in Rabat. As a telecommunications engineer, he secured a job offer from a French telecom operator as soon as he graduated from the National Institute of Applied Sciences (INSA) in Lyon. He explains that this administrative procedure can act as a deterrent for foreign graduates, particularly Moroccans, seeking to settle in France:

> Author: And for work, did you need time to look for a job?
>
> Jalil: Not time to look for a job, but time to wait—waiting for the paperwork.
>
> Author: How did it go?
>
> Jalil: The company was ready to hire me, but I needed a work permit. And why am I telling you this? Because all Moroccans face this issue. When it comes to a status change, it means waiting. So, I applied for the status change in July, and [the prefecture] gave me an appointment to submit my file at the end of October. During all that time, you're not allowed to do anything. You can't do anything, you just wait, unless you work illegally, which I didn't do. I didn't want to take any risks, especially since I already had a job offer. So, I told myself, I'll borrow money from friends, ask my parents to help me get through the months between those two dates. Then I submitted my file and got a temporary permit, which allowed me to start working. Because if there had been another month of waiting, or another issue or delay, I would have given up. And I'm saying this now, France is losing a lot of Moroccan graduates because of this, because of this procedure. I consider myself somewhat lucky because it was a close call and I managed to start working, but many people left, they couldn't wait, they didn't want to wait. (Interview conducted in Paris, November 2017)

Arriving in 2006 immediately after obtaining her baccalaureate, Laïla pursued her higher education in France, eventually earning a master's degree in applied mathematics. Her father is an executive at a bank in Casablanca, and her mother is a high school mathematics teacher. Despite her qualifications, Laïla returned to live in Morocco because her application for a change of status prevented her from starting her professional career in France:

> Laïla: After obtaining my degree, I didn't even have to search for a job; I was actively sought out! I received several job offers, one of which particularly interested me. It felt almost too easy! I initiated the process [of changing my status], but an unexpected obstacle arose: the Guéant circular. This created significant challenges for nearly a year, especially since I was among the very first cases affected. (Interview conducted online via Skype, November 2017)

Although Laïla received assistance from the company that was eager to recruit her throughout her administrative procedures, she ultimately decided

[6] It should be noted that all names used to refer to the interviewees are pseudonymous. All of the following interview passages excerpts were translated from French to English by the author.

to return to Morocco after a year of waiting. This was due to the lack of resolution regarding her status change and the financial resources she lacked to continue living in France. During our interview, she noted that during this time, the human resources departments of some companies avoided hiring foreign graduates, characterizing them as "problematic individuals" due to the administrative barriers impeding their access to employment. For Laïla, the Guéant circular constituted a significant obstacle to her professional integration and career advancement in France:

> Laïla: Of course, this has impacted my professional trajectory, whether I stayed in France or not. I lost nearly a year and a half of my life for nothing. Without all this, I could have climbed the ranks much more quickly. Instead, I returned to square one a year and a half after graduating. Currently, I hold a junior position in my company, whereas, without this circular and all the lost time, I could have already been at a senior level.

Upon her return to Casablanca, Laïla was initially obliged to accept a position that neither corresponded to her degree nor aligned with her professional aspirations. She was hired for a two-year term as a client relations officer at a Moroccan bank, where she subsequently received a promotion to the role of management controller within the human resources department. Although Laïla believes she has been able to recover professionally following her involuntary return, she highlights that her migratory project remains ongoing:

> Author: And what do you envision for the future? What do you want to do in the coming years? How do you see things unfolding? What are your plans?
>
> Laïla: My plans? The thing is, after spending more than six years in France and returning, I think I'm someone who may not like to stay in one place for too long. I'm not referring to the company, but rather to the country itself. Right now, I'm contemplating the possibility of moving abroad in two years. I must admit, I'm not considering France at all, but rather focusing on Canada.

For other interviewees from Morocco's upper social classes, who graduated from prestigious French institutions, the cumbersome nature of the status change procedure is perceived as a form of disdain towards foreign students trained in France. This sentiment is articulated by Soufiane, a graduate of the École des Mines de Paris, one of France's most esteemed engineering schools, renowned for its excellence, advanced training, and strong connections with major national and international industrial companies. The son of a doctor father and a mother who is an executive in the Moroccan army, Soufiane describes his "career of papers" since arriving in France in 2010, saying that the process of applying for a visa and then renewing his "student" residence permit was relatively straightforward and transparent. However, when he discusses the status change procedure, he expresses strong criticism and extends his reflections to all foreigners facing these bureaucratic hurdles in France:

> Soufiane: Despite the French government's proclaimed commitment to modernizing the administrative system to enhance its simplicity and accessibility, the reality does not align with these assertions. For example, the websites of prefectures are often outdated, and the information provided by the agents at the counters is frequently inaccurate. Furthermore, the experience of stigma cannot be overlooked; although it may seem exaggerated, there is a pervasive sense of being under scrutiny. When visiting the prefecture, individuals often find themselves compelled to advocate for their needs to be acknowledged. We are treated as if we are newcomers, despite having resided in France for an extended period. It is entirely reasonable for us to expect a certain level of respect and treatment. The way we are treated starkly contrasts with our expectations. (Interview conducted in Paris, November 2017)

Soufiane's critique not only addresses the complexities of the status change procedure but also broadly targets the "counter policy" (Spire 2016, 2017) implemented within French prefectures:

> Soufiane: What shocks me is this discrepancy between the discourse and the attitude towards foreign students: France seeks to position itself as the leading destination for international students and researchers, yet when a student wishes to remain in France, they are subjected to various obstacles. There is a lack of clarity, and every effort seems to be made to ensure that they are poorly informed, which increases the likelihood of making errors in the administrative procedures necessary for maintaining their legal status in France.

Like Jalil, Soufiane experienced significant delays due to the administrative constraints he criticizes. He also missed professional opportunities: after being recruited by a French company in the energy sector in December 2016, he applied for a change of status in February 2017. However, by the time of our interview in November, he had yet to receive his "salaried" residence permit, having only been issued a second receipt.

Faced with the burdensome change of status procedure and its significant financial costs, particularly for employers,[7] foreign graduates often find themselves compelled to assume all the associated expenses in order to launch their professional careers in France. This is corroborated by Youssef, who arrived in France in 2006 after obtaining his baccalaureate through a scholarship provided by the Moroccan government. Graduating from ENSTA Bretagne in 2011 and currently working as an engineer in a multinational company specializing in the maritime sector, Youssef notes that, in addition to the discrimination foreign graduates face during the recruitment phase, there is also salary discrimination stemming from these administrative constraints, particularly the difficulties associated with the change of status:

[7] The employer is required to pay a fixed fee to the OFII (Office Française de l'Immigration et de l'Intégration), which varies depending on the type of residence permit requested, the duration of the employment contract, and the level of salary offered.

> Youssef: These legal constraints have a direct impact on our salaries. The salary of a foreign beginner is not equivalent to that of a French counterpart. For example, a recent graduate from a lesser-known private school in Paris has recently been hired at my company. In conversation, he mentioned that he earns 37,000 euros gross annually, which is substantial compared to my salary and those of my foreign colleagues. I graduated from a prestigious institution, and a foreign friend holds a PhD, yet we are compensated less than someone who attended a small private school. The type of company I work for bases its salary scale on what I consider to be shakedown: we [foreign graduates] want to start our professional career in France and make our change of status, so we can hardly negotiate our employment conditions. Employers are acutely aware of this power imbalance, resulting in lower salaries for us compared to our French colleagues, as they essentially "sell" the change of status opportunity to us. (Interview conducted in Paris, November 2017)

For Youssef, the complexities of the change of status procedure contribute to salary discrimination. Complex and lengthy, this process creates a vulnerability for foreigners who choose to settle in France after completing their studies. The administrative demands associated with this procedure increase the risk of losing regular residency rights and career opportunities, while also exposing these highly skilled workers to discriminatory salary practices. Despite holding the same degrees as their French counterparts, young foreign managers find themselves subject to "discretionary powers whose rules appear to them to be largely arbitrary, even discriminatory" (Lochard et al. 2007, 99).

5. Conclusion

From the application for a long-stay visa for studies to the submission of the status change application at the prefecture, this article traces the "paper careers" of Moroccan engineers and managers who graduated in France and chose to remain there to work. Although they hold advanced degrees and match the profiles sought for jobs classified as "in tension," which are characterized by a shortage of skilled labor, the professional integration of these highly skilled migrants into the French job market remains uncertain and far from systematic. Caught between, on the one hand, the administrative slowness of the DIRECCTE, which severely restricts access to professional opportunities, and, on the other, the draconian requirements of the prefectures in terms of residency rights on French territory, foreign graduates in France are faced with bureaucratic obstacles that shape their "paper career." These obstacles are not merely formalities; rather, they give rise to complex and repetitive procedures that extend over months or even years, thereby plunging these graduates into a state of perpetual uncertainty regarding their

professional futures. The delays in obtaining residence permits or work authorizations frequently result in the loss of opportunities that align with their qualifications, thereby keeping them in precarious employment situations. These administrative barriers impede their integration into the labor market, limit their mobility, and obstruct their ability to advance in skilled jobs. Consequently, the numerous bureaucratic hurdles create a significant gap between foreign graduates and their French counterparts, preventing them from fully exploiting their potential and pursuing careers that align with their qualifications.

After several years of studying and living in France, many students and highly skilled foreign workers have no intention of returning to their country of origin. Confronted with the complexity of their "paper career," however, many choose to leave France for more attractive destinations such as Canada, the United States, or the Gulf States. In this context, while countries of origin often accuse destination countries of draining their citizens of high scientific and professional capital, France, through its restrictive political-administrative system, is producing a form of second brain drain of these "brains" it has also trained. This situation highlights the paradox of a migration policy in a country that invests in the training of talent while simultaneously implementing administrative conditions that compel these individuals to seek opportunities elsewhere.

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Stratifying Non-EU Workers. The Vague and Narrowing Boundaries of the Immigration Category of "Talent" (France, 2006–2024)

Adrien Thibault *

Abstract: *»Zur Stratifizierung von Nicht-EU-Arbeitskräften. Die vage und verengende Definition der Einwanderungskategorie ‚Talent' (Frankreich, 2006-2024)«.* Over the 21st century, "talent" has become an immigration category in France (as elsewhere, like has in the UK), providing the basis for the preferential legal treatment of certain categories of non-EU foreign workers, whose mobility is facilitated due to their high desirability. This vague immigration category, targeting exclusively workers belonging to upper socio-professional categories, now appears to be relatively consistent in terms of class and social stratification. However, a socio-historical study of the legislative dossiers of the 2006 and 2016 French laws introducing the "Skills and Talents" and "Talent Passport" residence permits respectively, complemented by a mixed-methods analysis of the deliberations of the Skills and Talents National Committee (2007–2014), online governmental and legal archives, and interviews with civil servants, leads to the observation that the (relative) social homogeneity of the category was not a foregone conclusion. This article shows how a *privileged* foreign population has been constructed in both senses of the term, as the debates surrounding the residence permits have gradually aligned the population targeted by this preferential policy with a population favored in terms of cultural and/or economic capital.

Keywords: Labor mobility, migration policies, residence permits, categories of public action, highly qualified workers, upper-middle class, socio-history, France.

* Adrien Thibault, IRMC, 20 rue Mohamed Ali Tahar, Mutuelleville, 1002 Tunis, Tunisia; SAGE, University of Strasbourg, 5 allée du Général Rouvillois, 67083 Strasbourg Cedex, France; adrien.thibault@irmcmaghreb.org. ORCID iD: 0009-0005-1197-9087.

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1. Introduction[1]

The "methodological continentalism" that too often reduces the history of Europe to that of the insular continental entity (Hansen and Jonsson 2014, 259) tends to overlook the fact that, in France (Brown 2022) as in the UK (El-Enany 2020), the (relative) free movement of (post-)colonial workers preceded the free movement of European Economic Community (EEC) workers. From the end of World War II to the early post-independence years, nationals of the (former) French Empire, despite a variation in legal statuses[2] and outside of particularly unfavorable contexts,[3] benefited from significant ease of movement and access to the metropolitan labor market, placing them in an intermediate position between nationals and foreigners (Spire 2005, 190-5; see also Mulonnière and Ricciardi 2025, in this issue). In 1960s France, however, the movement of post-colonial workers was rapidly restricted, similarly to that in the UK (El-Enany 2020), while that of EEC workers became increasingly easier. The free movement in Europe finally became an administrative reality at the end of 1968, 11 years after its proclamation in the Treaty of Rome (Spire 2005, 230-4; see also Comte 2025, in this issue), and the same year that Algerian workers lost this right in France (Laurens 2009, 9; Parrot 2019, 58). This effectively replaced colonial workers by European workers in the legal intermediate position between nationals and foreigners.

With the suspension of extra-EEC labor immigration in France in 1974 (Laurens 2009), the movement of nationals from former colonies, like that of all non-EEC foreigners, became even more restricted. However, this general rule quickly allowed for several exceptions (Weil 1991, 93; Laurens 2020, 46), including highly qualified workers: researchers, artists,[4] and top-level executives.[5] With the creation and institutionalization of the French "Talent" residence permits over the 21st century, despite changes in parliamentary majorities (introduction of the "Skills and Talents" card in 2006 under Chirac, replaced by the "Talent Passport" in 2016 under Hollande, later renamed "Talent" in 2024 under Macron), two major changes have been made with respect

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[2] "Muslim French" in Algeria, "*Protégés*" in Morocco and Tunisia, "Citizens of the French Union" in French West Africa and French Equatorial Africa, etc.

[3] Such as the Algerian War of Independence between 1954 and 1962.

[4] Circular No. 9-74 of July 5, 1974, from the Secretary of State to the Minister of Labor, regarding the temporary halt on the introduction of foreign workers.

[5] See in particular the DPM/DMI 2 circular No. 2004-143 of March 26, 2004, regarding the issuance of work permits and residence permits for foreign top executives and senior-level managers.

to these highly qualified extra-EU workers:[6] first, they have been grouped together into a single collective category; second, and similarly to the free movement of EEC workers, what initially only constituted a preferential administrative treatment was gradually converted into a rights-granting legal differentiation, a shift that represents "a significant change in the categorization system of immigration" (Spire 2005, 234).[7] Henceforth, this new category of public action allows for a preferential legal treatment of certain non-European foreign workers admitted to France for economic reasons,[8] facilitating their international mobility through accelerated procedures and fewer administrative constraints (absence of opposability of the labor market, right to bring in spouse and children without delay, multi-year validity from the first residence permit onwards, exemption from the medical examination and the obligation to sign the integration contract, etc.), especially when compared to the "Temporary Worker" and "Employee" French residence permits (Thibault 2025; see also Jamid 2025, in this issue). France was the first European country[9] to introduce a residence permit bearing the word "talent," after Australia and New Zealand (both of which are OECD countries and former settler colonies) did so in the second half of the 20th century. Over the past two decades, the notion of talent has become the subject of growing attention and use in migration studies, mainly in English-language literature (Cerna 2016; Qin 2015; Shachar 2006; Shachar and Hirschl 2013). Lucie Cerna and Meng-Hsuan Chou have examined the various ways in which the "concept of 'talent'" is defined and used in this literature. They note a "lack of conceptual rigor in defining 'talent'" and consider that "the initial ambiguity and plethora of definitions only contribute to further confusion" (Cerna and Chou 2019, 825, 835). Similarly, in French-language academic literature, legal historian Laurent Pfister considers the French Talent Passport "instructive" in that it "gives more substance to what the French legislator now means by 'talent'" (Pfister

[6] With the exception of Algerians, whose movement and employment in France are governed bilaterally by the Franco-Algerian agreement of December 27, 1968, and its subsequent amendments, all of which predate the legislation of 2006 and 2016.

[7] All quotations in this text originally in French have been translated into English by the author of this article.

[8] While the Skills and Talents permit has given rise to only a few hundred first-time issues per year (cf. Bernard, Hélène, Bertrand Brassens, Agathe Cagé, Bernard Fitoussi, and Louis Le Vert. 2013. "Rapport sur l'accueil des talents étrangers," interministerial report, April, appendix volume, pp. 23-5), the number of first-time issues of the Talent Passport permit per year is now in the thousands. In 2022, according to data provided by the statistics department (DSED) of the General Directorate for Foreigners in France (DGEF), more than 18,000 such permits were issued for the first time, two-thirds of them to workers (and the remaining third to their family members).

[9] There is no such immigration category in Germany. Nevertheless, Germany has invested heavily in the European Blue Card scheme (cf. Directive 2009/50/EC and Directive [EU] 2021/1883), which concerns highly qualified employment including tech professions (Shmihelska 2020; see also Beronja 2025, in this issue). In France, the European Blue Card is merged with the Talent Passport scheme.

2018, 184). In fact, this search for a definition appears to be an impossible quest, since talent is not a scientific concept, but a vague notion that is subject to multiple political and social uses. This observation forces us to take a different line of questioning: When faced with a social group or a category of public action, the socio-history of public action categories (Payre and Pollet 2013; Zimmermann 2003) invites us to denaturalize it and to unravel the "mystery [...] of its birth" rather than the "mystery of its substance" (Boltanski 1982, 236) by tracing the genesis of its collective invention. In addition to Luc Boltanski's work on the social group of managers [*cadres*], this socio-historical approach has been mobilized notably for the study of economic categories such as the "Unemployed" (Topalov 1994), immigration categories such as "Nationals" (Noiriel 1995) and "Refugees" (Noiriel 1997), and categories of public intervention such as "Environment" (Charvolin 2003) and "Culture." In fact, the latter category is strikingly similar to talent: "It is a vague category that has been institutionalized only because of this vagueness" (Dubois 1999, 237; 2008, 19). Despite its initially indeterminate nature, the vague immigration category of talent now seems relatively consistent from the point of view of social stratification as conceived in the French nomenclature of professions and socio-professional categories (see Inset 1). Indeed, it exclusively targets the various fractions of the French upper-middle class, from the most intellectual ones (characterized by a predominance of cultural capital: researchers and artists) to the most economic ones (characterized by a predominance of economic capital: private-sector senior executives and entrepreneurs) (Bourdieu 1979). Thus, the new category is no exception to the old rule that "the political (and controversial) use of collective nouns encloses [...] the implicit reference to class logic" (Boltanski 1982, 257). However, the (relative) social homogeneity of the talent category as a population belonging mainly to the French upper socio-professional categories (managers, higher intellectual professionals, and business leaders), in other words to the upper-middle class, was not a foregone conclusion.

To demonstrate this, I draw on a systematic study of the legislative dossiers[10] of the 2006 and 2016 laws[11] that respectively introduced the "Skills and

[10] In addition to the bill itself, the legislative dossiers include the government bill, the impact study, the minutes of the Council of Ministers, the amendments proposed to the bill (adopted or not), the full reports of the parliamentary debates, the reports of the various committees, the decision of the Constitutional Council and a disparate collection of national and international texts grouped together under the heading "useful links," which form the basis of the bill. The keyword *talent** was systematically searched throughout this corpus.

[11] Law No. 2006-911 of July 24, 2006, on immigration and integration and law No. 2016-274 of March 7, 2016, on the rights of foreigners in France.

Talents"[12] (ST) and "Talent Passport"[13] (TP) residence permits,[14] along with both qualitative and quantitative analysis of the deliberations of the Skills and Talents National Committee[15] (STNC, 2006–2014). Other online archives[16] and interviews[17] are used to supplement these legislative and administrative records, creating an eclectic empirical material to show the incremental process of defining the boundaries of this category: a process elaborated by successive right-wing and left-wing governments initiating legislative proposals, parliamentarians discussing and amending bills, senior civil servants and figures from civil society appointed to specify eligibility criteria, and immigration bureaucracy agents tasked with implementing policies. The article thus demonstrates how a *privileged* foreign population has been constructed in both senses of the term, as the discussions and struggles surrounding the residence permit gradually aligned the group targeted by this preferential policy with a population favored in terms of economic and/or cultural capital. This politico-administrative construction is the dual product of a gradual focus on the most desirable foreigners, i.e., those with higher education degrees and, above all, high incomes (2.), and of the exclusion of foreigners seen as less desirable, i.e., students and workers from the working and lower-middle classes (3.).

[12] In French, *Compétences et talents*.

[13] In French, *Passeport talent*.

[14] The legislative dossiers of Law No. 2018-778 of September 10, 2018, on controlled immigration, effective right of asylum and successful integration, as well as Law n°2024-42 of January 26, 2024, on controlling immigration, improving integration, were also reviewed, but proved less central, as these two laws made only marginal revisions to the scheme.

[15] In French, *Commission nationale des compétences et des talents*.

[16] I have analyzed the successive versions of the draft bill proposal, found in web archives, and the regulatory texts (orders, decrees, circulars, etc.) relating to these residence permits, most of which are available on *Legifrance*.

[17] Interviews with former members of the STNC, authors of reports on "Welcoming Foreign Talent" and (past or present) members of a consular service based on the African continent. All interviews were conducted between May 2021 and May 2023.

Inset 1 The INSEE nomenclature of professions and socio-professional categories in France

The 2003 PCS[18] nomenclature is a French statistical classification system developed by the French National Institute of Statistical and Economic Studies (*Institut national de la statistique et des études économiques*, or INSEE) to categorize occupations and professional groups in France. Widely used by both public administrations and research institutions, it helps organize and analyze the social and professional structure of the French workforce, providing a standardized way to classify people based on their job, professional status, and socio-economic position. The workforce is thus divided into eight main categories: Farmers; Craftspeople, Retailers, and Business Leaders; Managers and Higher Intellectual Professionals; Intermediate Occupations; Employees; Manual Workers; Retirees; and Other Inactive Persons.

It was first created in 1954 under the name of socio-professional categories (French acronym: CSP). It was then recast in 1982 and given its current name, before being revised in 2003, 2017 and 2020. The first six socio-professional categories of the 2003 nomenclature have remained unchanged since then, while the last two have disappeared.

2. Including the Most Desirable Foreigners

If engineers form the core of managers in France (Boltanski 1982), then it is artists who form the core of talents: They are the only people whose inclusion in the category has never been questioned in parliamentary debates, whether on the Skills and Talents card or the Talent Passport. While this consensual core group is symbolically important, it is quantitatively limited. Other professions, namely scientists (2.1.) and senior employees in the private sector (2.2.), have gradually aggregated around it. At first, they entered under the heading of "skills" before being subsumed under that of "talent."

2.1 The Explicit Inclusion of the Intellectual Fractions of the Upper-Middle Class

The expansion of the talent category beyond the core group of artists first benefited employed researchers, who also belong to the intellectual fractions of the upper-middle class. According to the terms of the bill submitted to the French National Assembly (FNA, lower house) by the government at the end of March 2006, the Skills and Talents residence permit was initially intended for "*foreign nationals who, due to their skills and talents, are likely to make a significant and lasting contribution to the economic development or influence*

[18] French acronym for *Professions et catégories socioprofessionnelles*.

[rayonnement], *particularly intellectual, cultural or sporting, of France or the country of which they are a national.*"[19] Two groups of beneficiaries were identified thus: "skilled" and "talented" foreign workers, each meant to serve France's economic and cultural prestige respectively. Scientists – who can be seen as contributing to both fronts – were not *explicitly* included in this initial formulation. On May 4, 2006, the FNA adopted an amendment by the Conservative majority Member of Parliament (MP) and former senior executive Alain Marsaud, proposing to add the qualifier "scientific" – *de facto* distinguished from "intellectual" – to the list of areas of national prestige.

At the time, the idea of treating non-EU foreigners more favorably when they worked in a scientific profession was not new. In fact, French and European Union law already provided special residence permits for employed researchers: the "Chevènement law" of 1998 allowed for the granting of an annual residence permit specifically for scientists;[20] the "Sarkozy law" of 2003 made it possible to extend the duration of this permit up to four years on renewal;[21] and finally, a European directive of 2005, inspired by the French experience, called for the implementation of a facilitated admission procedure for non-European scientists.[22] In that same year, Alain Marsaud was the first signatory of a bill, supported by 132 MPs from the right-wing majority but ultimately rejected, "introducing a [ten-year] residence permit for *top-level researchers*."[23] The latter expression was also used in the summary statement of his 2006 amendment,[24] which shows that it was directly inspired by the 2005 bill. The three-year residence permit clearly appeared to him to be a substitute for the ten-year permit, reserved in France since 1984 for individuals who have been legally resident in the country for several years (Weil 1991, 176-82). However, nothing in his initial bill, or in the legal texts mentioned above, committed to – or even encouraged – considering researchers as "skilled" or "talented."

Despite this, the inclusion of scientists under the heading of "skills and talents" seemed so unanimous in 2006 that the amendment was adopted without

[19] "Projet de loi relatif à l'immigration et à l'intégration," 2986, FNA, March 29, 2006; https://www.assemblee-nationale.fr/12/pdf/projets/pl2986.pdf (Accessed April 2, 2025).

[20] Article 4, Act No. 98-349 of May 11, 1998, on the entry and residence of foreigners in France and the right of asylum; https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000191302 (Accessed April 2, 2025).

[21] Article 20 of Act No. 2003-1119 of November 26, 2003, on immigration control, the residence of foreigners in France and nationality; https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000795635 (Accessed April 2, 2025).

[22] Directive 2005/71/EC of the Council of the European Union of October 12, 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; https://eur-lex.europa.eu/eli/dir/2005/71/oj (Accessed April 2, 2025).

[23] "Proposition de loi instaurant une carte de résident pour les chercheurs de haut niveau," 2188, FNA, March 23, 2005; https://www.assemblee-nationale.fr/12/pdf/propositions/pion2188.pdf (Accessed April 2, 2025).

[24] Amendment No. 327, FNA, May 2, 2006; http://www.assemblee-nationale.fr/12/pdf/amendements/2986/298600327.pdf (Accessed April 2, 2025).

the slightest debate.[25] This can be explained by the fact that employed researchers were probably intended to be included in the scheme under the heading of "intellectuals," although Alain Marsaud's proposal failed to consider this aspect. Thus, two days before the amendment was adopted, Thierry Mariani, Rapporteur for the FNA's Legal Affairs Committee, took the floor to clarify that "*the 'Skills and Talents' card […] is reserved for particular talents: sportsmen, scientists, and others."*[26] The following day, Christian Vanneste, a UMP[27] member of the lower house, mentioned "*Cuban artists*" and "*scientists from North Korea who have fled their socialist dictatorships*"[28] among the card's desirable beneficiaries – corroborating the inclusion of scientists by re-enacting the Cold War confrontation.

Almost ten years later, when the Skills and Talents card was reformed under the center-left parliamentary majority as a Talent Passport, the inclusion of (employed) researchers was also taken for granted, which was probably facilitated by the Socialist Party's roots among academics. The inclusion of scientists in the immigration category of talent remained uncontested in parliamentary debates, having been explicitly mentioned in the list of card beneficiaries as early as the bill's introduction.[29] However, (unemployed) PhD holders were still the subject of discussion within the FNA's Cultural Affairs Committee during the voting of an amendment. Green[30] MP Isabelle Attard – who had recently obtained a PhD in Archaeology[31] – defended her proposal to automatically grant a Talent Passport to foreign PhD holders. Despite voting against the amendment, the Committee's Rapporteur, Socialist MP Valérie Corre, agreed with her that "*our PhDs are valuable 'talents,'*" as can be noted in the following exchange between the two:

The Committee […] examines amendment AC25 by Isabelle Attard.

[25] *Journal officiel de la République française* (JORF), FNA, full report, 3rd session of May 4, 2006, No. 39 (3), p. 3029; http://www.assemblee-nationale.fr/12/pdf/cri/2005-2006/20060208.pdf (Accessed April 2, 2025).

[26] *JORF*, FNA, full report, 3rd session of May 2, 2006, No. 37 (3), p. 2818; http://www.assemblee-nationale.fr/12/pdf/cri/2005-2006/20060203.pdf (Accessed April 2, 2025).

[27] The *Union pour un Mouvement Populaire* (Union for a People's Movement; 2002–2015), initially formed as a coalition of several right-wing and center-right factions, was the main conservative political party in France between 2002 and 2015, and held the majority in the FNA from 2002 to 2012.

[28] *JORF*, FNA, full report, 2nd session of May 3, 2006, No. 38 (2), p. 2918; http://www.assemblee-nationale.fr/12/pdf/cri/2005-2006/20060205.pdf (Accessed April 2, 2025).

[29] "Projet de loi relatif au droit des étrangers en France," 2183, FNA, July 23, 2014. https://www.assemblee-nationale.fr/14/pdf/projets/pl2183.pdf (Accessed April 2, 2025).

[30] The Green Party (*Europe Écologie – Les Verts*) was part of the coalition government from 2012 to 2014. Although it left the government after 2014, it continued to support the ruling Socialist Party.

[31] *Who's Who in France*.

Isabelle Attard. The purpose of this amendment [...] is to automatically grant a multi-year residence permit to [foreign] holders of a PhD degree issued in France. [...]

Rapporteur for opinion [Valérie Corre]. [...] The "Talent Passport," as improved by our text, is open to PhD students and can be renewed; those concerned, therefore, already have the possibility of remaining in France after completing their studies. For these reasons, I oppose this amendment.

Isabelle Attard. [...] If we want to value the title of doctor as foreign countries do [...], we need to officially recognize that our PhDs are "talents."

Rapporteur [Valérie Corre]. You could not have said it better, and that is why they will be covered by the Talent Passport from now on!

The Committee rejects the amendment.[32]

Nevertheless, not only have PhD holders without contracts, and thus considered to be inactive, never in fact been clearly eligible to the scheme, but scientists as a group also continue to remain peripheral to the talent category. According to a French deputy consul in charge of visas on the African continent, "*we don't really put them in the economic category, we put researchers slightly apart*," because "*it's not the same logic here, in their case we're talking about exchange mobility rather than professional immigration.*" This marginal position can be explained by the fact that the scientists in question are in fact mainly contracted PhD students rather than the Nobel Prize winners and patent filers envisaged initially by ministers and parliamentarians. These young scientists thus constitute a population on the borderline of the upper-middle class: While they do fall into the category of "Managers and Higher Intellectual Professionals" as defined by the INSEE, they simultaneously maintain a student status, which would ordinarily make them eligible for a student residence permit (see Jamid 2025, in this issue) instead of a Talent Passport.

2.2 Focusing on the Economic Fractions of the Upper-Middle Class

Having integrated the cultural and intellectual fractions of the upper-middle class through the inclusion of artists and academics, the talent category then expanded to benefit mainly engineers, private sector managers, and entrepreneurs – in short: the economic fractions of the upper-middle class. A study of the deliberations of the Skills and Talents National Committee (STNC) and its social composition (for a similar approach, see Fertikh 2025, in this issue) speaks volumes in this respect. This *ad hoc* committee, set up by the 2006 law and abolished in 2014,[33] was responsible for determining the criteria for

[32] FNA, Cultural and Education Affairs Committee, report, 50, session of June 30, 2015, p. 20. https://www.assemblee-nationale.fr/14/pdf/cr-cedu/14-15/c1415050.pdf (Accessed April 2, 2025).

[33] Decree No. 2014-132 of February 17, 2014, abolishing administrative committees of a consultative nature; https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000028613558 (Accessed April 2, 2025).

granting the Skills and Talents residence permit. It gave rise to three appointment orders[34] and four deliberations[35] between 2007 and 2010, which makes it possible to reveal the economic purpose of the residence permit and its focus on the most valued workers of the private sector.

In its first deliberation at the end of 2007, the committee adopted the following guideline: "*Regardless of the degree, a level of income, if it is locally comparable to that of a senior manager* [cadre supérieur]*, will be valued.* [...] [With the exception of artists and sportsmen,] *applicants without a degree must provide proof of at least five years' professional experience [at this] income level*."[36] In so doing, the committee confirmed the words of the Immigration Minister, who had promised five months earlier that the residence permit would "*not be reserved for an elite of super graduates*."[37] Nonetheless, higher education degrees have not lost their entire value in the eyes of the committee's members. The higher the degree, the lower the professional experience requirements both in terms of duration and remuneration – to the point of eliminating, under various conditions, any requirement of previous experience for a PhD holder. This excerpt from a deliberation reveals "the tensions and accommodations between two possible definitions of the managers' social identity, which we can relate to two possible forms of justifying the value of an activity" (Desrosières and Thévenot 1988, 43): either justification by the degree or justification by professional experience. However, with the advent of the talent category, the balance between the two forms of justification has clearly shifted: Whereas in the 1960s, a degree could appear to be a sufficient and virtually necessary condition for entry into the social group of managers (Boltanski 1982, 307), professional experience at a high salary level has become, since 2007, a sufficient and almost necessary condition for joining the social group of foreign "(skills and) talents." In the same vein, in 2014, the impact study for the bill introducing the Talent Passport noted that "*the possible absence of a minimal salary level would have led to the generalization of this permit, which runs counter to a policy of attractiveness aimed solely at international talent*,"[38] thus explicitly associating "talent" and "salary level."

Moreover, when we look at the composition of the committee during its initial deliberation, it becomes clear that the policy was aimed primarily, from the beginning, at the economic fractions of the upper-middle class, rather

[34] Orders of December 10, 2007, March 25, 2008, and July 21, 2009, Ministry of Immigration.

[35] Deliberations of December 11, 2007, April 16, 2008, December 10, 2009, and June 28, 2010, Ministry of Immigration.

[36] STNC deliberation of December 11, 2007, p. 2; https://www.legifrance.gouv.fr/download/pdf?id=a13JUO3X-Ib1nzDVSltWgSiW1I_L52Km8U5Pd5KGQDQ= (Accessed April 2, 2025).

[37] "Déclaration de M. Brice Hortefeux...", closing speech at the International Cooperation and Development Days, Paris, July 18, 2007, accessed via the *Wayback Machine*; http://web.archive.org/web/20070922073119/http:/www.premier-ministre.gouv.fr/iminidco/salle_presse_832/discours_tribunes_835/discours_brice_hortefeux_lors_56905.html (Accessed April 2, 2025).

[38] "Étude d'impact. Projet de loi relatif au droit des étrangers en France", July 22, 2014, p. 41; https://www.assemblee-nationale.fr/14/pdf/projets/pl2183-ei.pdf (Accessed April 2, 2025).

than artists, scientists, and athletes. First, the committee was chaired by Pierre Bellon, then France's twelfth richest man[39] and one of the most prominent representatives of French employers. Not only was this appointment highly symbolic, but the chairman also held the power of a tie-breaking vote,[40] which reveals the hands in which the deciding power was intended to reside. Second, an unequal power balance is perceptible in the ministerial composition of the STNC: While the Ministries of the Economy and Labor each initially received two seats (not counting the one allocated to the Chairman of the French government Agency for foreign direct investments), the Ministries of Education, Culture, and Sport each received only one seat.[41] Although this was corrected a few months later, with the Ministries of the Economy and Labor ultimately retaining one seat each, it was at the expense of an increase in the number of "*qualified figures*," which rose from one to five[42] – thus increasing the number of decision-making corporate executives. Finally, this power imbalance is evident in the committee's professional composition on December 11, 2007 (Table 1). Whether we look at all of the appointed members, or the only ones designated as titular members, or the only members present at the committee's first (and most important) deliberation, the STNC appears to have been far from "*made up of intellectuals, artists of all nationalities*" (Claude Goasguen, majority MP) and "*figures from all walks of life and with diverse skills*" (Christian Estrosi, Deputy Minister for Spatial Planning) as envisaged at the time of the parliamentary debates.[43] On the contrary, it brought together mainly senior civil servants (almost all former cabinet members of right-wing ministers)[44] and, less prominently, senior executives (members of the executive council of the main employers' organization in France, known as Medef, with one exception),[45] all of whom were French born. The artists and foreigners, for their part, were conspicuously absent.

[39] "Les 14 Français présents dans le classement de Forbes," *Challenges.fr*, March 6, 2008; http://www.challenges.fr/entreprise/les-14-francais-presents-dans-le-classement-de-forbes_375923 (Accessed April 2, 2025).

[40] 4th paragraph of article R315-3 of the CESEDA, in force from March 22, 2006, to February 19, 2014; https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000017641357/2014-02-18 (Accessed April 2, 2025).

[41] Decree No. 2007-372 of March 21, 2007, on the ST card; https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000000649617 (Accessed April 2, 2025).

[42] Decree No. 2007-1711 of December 5, 2007, on the ST card; https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000017574743 (Accessed April 2, 2025).

[43] *JORF,* FNA, full report, 3rd session of May 4, 2006, No. 39 (3), p. 3030; http://www.assemblee-nationale.fr/12/pdf/cri/2005-2006/20060208.pdf (Accessed April 2, 2025).

[44] This is the case for 5 of the 6 members present and for 6 of the 8 titular members.

[45] *Who's Who in France*.

Table 1 Professional Composition of the STNC on December 11, 2007

Occupation	Appointed		Titular		Present	
Senior civil servants	13	57%	8	50%	6	55%
Corporate executives	4	17%	4	25%	3	27%
Politicians *(MPs or Senators)*	2	9%	2	13%	1	9%
Trade unionists *(ESC members)*	2	9%	1	6%	1	9%
Former top sportsman	1	4%	1	6%	0	0%
Scientist	1	4%	0	0%	0	0%
TOTAL	**23**	**100%**	**16**	**100%**	**11**	**100%**

Only two STNC members stand out in this group: an economist from the French National Center for Scientific Research[46] (appointed as a substitute member), and a former boxing world champion (appointed as a titular member). Both are French but born outside of France: the former, of Jewish origin, was born under a French protectorate in the Maghreb; the latter, born in the Middle East, hails from a family of atheists with a Muslim cultural background. Aside from these characteristics, the scientist is not very different from the committee's corporate executives: He holds a PhD in management from the Paris Dauphine University and was, in 2007, a member of the board of directors of a number of major (formerly state-owned) French private companies,[47] including Orange (telecommunications) and EDF (electric utility) – being thus anything but an ordinary researcher. The situation is different for the former athlete, who was the only member of the committee being neither a senior civil servant, a member of a French constitutional assembly,[48] nor a member of the board of directors of a major corporation. Far from this, he was simply the deputy sports director of a departmental council. Asked in an interview about the reasons for his appointment to the STNC as a representative of the Ministry of Sports, he emphasized his indirect links with the entourage of the then President of France, as well as the not only "highly symbolic" but also "purely symbolic" nature of his appointment (Fassin 2010, 657):

> Well, that was my social commitment. And my… Franco-French approach […]: You go somewhere, you adapt, or you don't go. And it was because of that I was welcome there. But I didn't realize it because I'd never been there [at the meetings] – well, but I suspected it – that… well… I was also a bit… the exception to the rule. […] Today, when I'm… on committees or at meetings, it's a lot more colorful than it was back then. *[He chuckles.]*

Indeed, he never attended any committee meetings. Invited to the first two, he declined attendance as he was not informed if his expenses would be covered. He was not asked to attend again. Thus, the symbolic reunion of the cultural and economic fractions of the upper-middle class brought about by the scheme is primarily at the material service of the latter. It proceeds from

[46] In French, *Centre national de la recherche scientifique* (CNRS).
[47] *Who's Who in France*.
[48] FNA, Senate or Economic and Social Council (ESC).

the strategic inclusion of culturally and symbolically desirable professions to legitimize the institutionalization of a set of exemptions for the benefit of economically and socially valued professions. Yet, if the immigration category of talent was formed by the aggregation and integration of different fractions of the upper-middle class, it was also formed by the exclusion of categories of non-EU foreigners situated at its periphery.

3. Excluding the Less Desirable Foreigners

According to Deputy Minister Christian Estrosi in 2006, "*skills and talents do not exclude anyone on principle.*"[49] In practice, however, Talent residence permits implicitly exclude not only children under the age of 15, the unemployed, and the inactive persons as defined by INSEE (mainly retirees and students), but also all working-class and lower-middle-class people, from blue-collar workers to members of the intermediate occupations. While this exclusion has never been debated in the case of the unemployed, the under-15s, and pensioners, the same cannot be said of other categories: students (3.1.), manual workers (3.2.), and intermediate occupations (3.3).

3.1 Excluding "Student Talents"

The first population to bear the brunt of the negative elasticity of the talent category, with its scope narrowing as it becomes institutionalized, is that of students, particularly the most highly educated ones. Initially included among the target populations of "chosen immigration" (see Jamid 2025, in this issue), they were not considered for preferential legal treatment. This exclusion later appears consistent with the 2003 French socio-professional nomenclature (see Inset 1), as students are listed as "Inactive Persons," a distinct aggregate category separate from "Managers and Higher Intellectual Professionals." It takes a palimpsest approach to the 2006 law to realize that it was not clear from the outset that they would be excluded from the scope of the residence permit. Thus, in its December 18, 2005, version, the draft bill proposal called for arbitration on whether the scheme was exclusive to professionals, or whether students could also be eligible. To this end, an alternative was proposed within square brackets (underlined below):

> The administrative authority competent [to grant the ST card] considers the content and interest of the foreigner's [professional] project for France and for the country of which he is a national. […] The card […] entitles its holder

[49] *JORF*, French Senate (FS), full report, session of June 8, 2006, No. 56, p. 4549; http://www.senat.fr/seances/s200606/s20060608/s20060608.pdf (Accessed April 2, 2025).

to engage in any professional activity of his choice [or, as the case may be, to study].[50]

Two possibilities were thus open: either to restrict the meaning of the "*foreigner's project*" by qualifying it as "*professional*," or to extend it to the possibility of studying. It was therefore not unthinkable at this stage that the activity justifying preferential treatment could be either academic or professional. However, as of the bill proposal draft released on January 30, 2006,[51] these two bracketed additions have disappeared.

By choosing neither of the two options, the text remains ambiguous. This was maintained by several reports published in the first half of 2006, just before the law was passed: in January, in a chapter entitled "*Organizing qualified immigration and attracting foreign students*," a report by the Ministry of the Economy argued "*in favor of a qualified immigration policy focused on students*";[52] in May, a report by the then-newly-created Center for Strategic Analysis[53] calls, in the form of a subtitle, for "*Attracting talent, particularly among students*";[54] in June, an OECD report notes that "*Several [of its member states] have taken new measures aimed at facilitating the recruitment of highly qualified immigrants [...] by attracting a larger number of international foreign students, considered as potential qualified workers.*"[55] Ambiguity was also maintained by the government in the Senate (upper house) in early June 2006. Introducing the bill, Interior Minister Nicolas Sarkozy included students in a list that closely resembled that of ST card's beneficiaries, proposing to "*facilitate the arrival in France of students, artists, intellectuals, athletes and job creators, who will be able to bring their talents to our country and, in return, acquire useful experience for their country of origin.*"[56] Two days later, the Deputy Minister for Spatial Planning spoke of "*competition for skills and talents*" in relation to

[50] "Projet de loi relatif à l'immigration," provisional and unofficial interministerial working document, December 18, 2005, p. 9, accessed via the *Wayback Machine*; http://web.archive.org/web/20071019051929/http:/www.contreimmigrationjetable.org/IMG/pdf/2005-12-18_avant_projet.pdf (Accessed April 2, 2025).

[51] "Avant-projet de loi relatif à l'immigration et à l'intégration," working paper, Ministry of the Interior and Spatial Planning, January 30, 2006, p. 10, accessed via the *Wayback Machine*; https://web.archive.org/web/20071019051949/http:/www.contreimmigrationjetable.org/IMG/pdf/2006-01-30_avant-projet.pdf (Accessed April 2, 2025).

[52] "Immigration sélective et besoins de l'économie française. Rapport," Ministry of the Economy, Finance and Industry, January 14, 2006, p. 40; https://medias.vie-publique.fr/data_storage_s3/rapport/pdf/064000160.pdf (Accessed April 2, 2025).

[53] The *Centre d'analyse stratégique* was an institution providing expertise and support for government decision-making, created in March 2006 to replace the *Commissariat général du Plan*. It is the forerunner of *France Stratégie*, which succeeded it in 2013.

[54] Boissard, Sophie (eds.), "Besoins de main d'œuvre et politique migratoire," report by the Center for Strategic Analysis, Prime Minister, May 2006, pp. 117-9; http://www.vie-publique.fr/sites/default/files/rapport/pdf/064000296.pdf (Accessed April 2, 2025).

[55] OECD, *International Migration Outlook. Annual Report, 2006 Edition*, Paris: OECD Publishing, p. 23. doi: 10.1787/migr_outlook-2006-en.

[56] *JORF*, FS, full report, session of June 6, 2006, No. 54, p. 4316; http://www.senat.fr/seances/s200606/s20060606/s20060606.pdf (Accessed April 2, 2025).

students, and suggested that the new residence permit would make it possible to "*welcome a medical student*" and "*allow him to practice for a while and then put this skill to work for his country.*"[57] Against this backdrop, it is hardly surprising that two MPs mistakenly believed, during the debates, that students could benefit from the ST card. Serge Blisko, Socialist MP for Paris, believed that "*foreigners classified as 'Trainees' or 'Students' will be good enough to benefit from the 'Skills and Talents' card.*"[58] Similarly, the centrist senator from Hauts-de-Seine, Denis Badré, proposed an amendment (adopted at the end of the session) to extend eligibility for the card to foreigners already residing in France, thinking "*for example of students*" and in particular those wishing to start a doctorate, whom he sees as a "*type of skills and talents.*"[59] The ambiguity was only completely removed a year and a half later by the STNC, which, in its first deliberation, adopted these two unequivocal guidelines, confirming the exclusion of students: "*1. The card is issued in principle for the realization of a professional project. […] 2. A purely academic project will not be considered.*"[60]

Yet, between 2014 and 2016, equivocation was still present in the parliamentary work leading up to the law on the rights of foreigners in France. As was the case in 2006, the debates took over from various reports highlighting the "*talents*" of students: in 2008, an OECD study entitled *Attracting Talent* devoted part of its analysis to student mobility;[61] in 2013, the interministerial mission "on welcoming foreign talent" considered that "*students with at least a Master 2*" degree fell within its scope;[62] in 2014, a report signed by Jacques Attali, an economist and former senior civil servant highly influential in French politics, devoted several paragraphs to international student mobility, under the title "*France no longer attracts enough talent.*"[63] Regarding the 2013 report, one of the co-authors justified *a posteriori* the inclusion of students in the population of "*Foreign Talent*" both by the proximity of the issues and by the institutional composition of the rapporteur group:

> The issue of the student population is one that we saw as posing a problem when we carried out our fieldwork […]. The view we got […] was that France

[57] *JORF*, FS, full report, session of June 8, 2006, No. 56, p. 4550; http://www.senat.fr/seances/s200606/s20060608/s20060608.pdf (Accessed April 2, 2025).

[58] *JORF,* FNA, full report, 3rd session of May 2, 2006, No. 37 (3), p. 2814; http://www.assemblee-nationale.fr/12/pdf/cri/2005-2006/20060203.pdf (Accessed April 2, 2025).

[59] *JORF*, FS, full report, session of June 8, 2006, No. 56, pp. 4546-7; http://www.senat.fr/seances/s200606/s20060608/s20060608.pdf (Accessed April 2, 2025).

[60] STNC deliberation of December 11, 2007, p. 1; https://www.legifrance.gouv.fr/download/pdf?id=a13JUO3X-Ib1nzDVSltWgSiW1I_L52Km8U5Pd5KGQDQ= (Accessed April 2, 2025).

[61] OECD, *Attracting Talent. Highly Skilled Workers in International Competition*, Paris: OECD Publishing, 2008, pp. 95-101.

[62] Bernard et al., "Rapport sur l'accueil des talents étrangers," *op. cit.*, p. 5; https://medias.vie-publique.fr/data_storage_s3/rapport/pdf/134000333.pdf (Accessed April 2, 2025).

[63] Attali, Jacques (ed.), "La francophonie et la francophilie, moteurs de croissance durable," report submitted to the President of the French Republic, Legal and administrative information department, August 2014, p. 40; http://www.vie-publique.fr/sites/default/files/rapport/pdf/144000511.pdf (Accessed April 2, 2025).

> was… too complex a place to come and study. […] Some people said to us: […] If it seems excessively complicated to come to France after the *baccalauréat* or for the master's degree, […] we're going to take France out of our geography. So, from memory, that's also why we'd been working on the issue of welcoming students. […] Perhaps this subject was also linked to… We had a colleague who was an IGAENR [*French acronym for General Inspector of Administration, National Education and Research*], and it was perhaps her sensitivity that played a part in this.

The assimilation of students to "*talents*" continued at the FNA, whether in the words of Interior Minister Bernard Cazeneuve ("*Second objective: Welcome talents. Our country needs to welcome intellectuals, researchers, scientists and students*"),[64] or in the words of the Legal Affairs Committee's Rapporteur Erwann Binet the following day (referring to another residence permit "*aim[ed] at highly qualified students and meet[ing] the objective of […] attracting talent*").[65] Nonetheless, later the same day, in response to *Les Républicains* MP Guillaume Larrivé's accusation that he was "*multiplying residence facilities for repeat students*," Bernard Cazeneuve made it very clear that students were in fact excluded from the scheme.[66] As a matter of fact, they are covered by a specific category of permit, namely the student residence permit. However, this clarification did not prevent parliamentarians from continuing to describe students as "*talents*" or "*talented*" in the debates that followed,[67] nor did it hinder future reports from using the same descriptors.[68] This testifies to the remarkable elasticity of the category, which continues to expand even when it is circumscribed. Regardless, the ambiguity in the students' standing in this category mirrors their unclear standing in the social stratification: While the most highly educated are destined to join the upper socio-professional categories in the near future, their income (or lack thereof) does not allow them to be fully included. Moreover, taken as a whole, and due to the massification of higher education, they are a socially heterogeneous population, whose administrative unity is destined to fragment as soon as they have completed their studies into a plurality of highly segmented social worlds.

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[64] *JORF,* FNA, full report, 1st session of July 20, 2015, No. 92 (1), p. 6905; http://www.assemblee-nationale.fr/14/pdf/cri/2014-2015-extra/20151020.pdf (Accessed April 2, 2025).

[65] *JORF,* FNA, full report, 1st session of July 21, 2015, No. 93 (1), p. 6985; http://www.assemblee-nationale.fr/14/pdf/cri/2014-2015-extra/20151022.pdf (Accessed April 2, 2025).

[66] *JORF,* FNA, full report, 2nd session of July 21, 2015, No. 93 (2), p. 7024; http://www.assemblee-nationale.fr/14/pdf/cri/2014-2015-extra/20151023.pdf (Accessed April 2, 2025).

[67] Ibid., p. 7025.

[68] Bonnet, Yves, and Emmanuel Saliot (eds.), "Attractivité du territoire français pour les talents internationaux," report No. 2015-M-083, General Inspectorate of Finance, April 2016, p. 1; https://www.igf.finances.gouv.fr/files/live/sites/igf/files/contributed/Rapports de mission/2016/2015-M-083.pdf (Accessed April 2, 2025).

3.2 Excluding "Manual Skills"

The second population to bear the brunt of the negative elasticity of the (Skills and) Talents category is the large group of workers who do not fall into the categories of Managers, Higher intellectual professionals, or Business leaders as defined by the INSEE, namely: manual workers, employees, craftspeople, retailers, farmers, and intermediate occupations. As in the previous case, we need to look back to 2006 to understand that the exclusion of all of these workers was not an obvious outcome. First, the aforementioned report on "selective immigration" did not consider that this selection should concern only the upper socio-professional categories. In its first table, entitled "*Qualified occupations with significant recruitment prospects for which immigration could be recommended*," the report included the teaching profession, which is classified by INSEE as an intermediate occupation. Another table, entitled "*Occupations for which immigration could alleviate recruitment difficulties in the next two or three years*," mainly listed qualified workers and technicians in the construction, mechanical, and food industries, alongside hotel workers and various intermediate occupations in trade and health.[69] Second, a review of parliamentary debates, which reveal competing conceptions of skills and talents, shows that the government itself, through its Deputy Minister for Spatial Planning, defended the inclusion of agricultural workers within the scope of the ST card. In the Senate, Socialist Senator Monique Cerisier-ben Guiga pointed out that "*80% of strawberry pickers*" in the French department of Loir-et-Cher […] are "*sedentary Turkish farm workers.*" In response, Deputy Minister Christian Estrosi, a descendant of an Italian manual worker,[70] defended the idea that highly educated workers do not hold a monopoly on skills and talents, suggesting that even strawberry pickers can possess them:

> Ms. Cerisier, […] those who have the most skills and talents to grow [strawberries], to practice this profession, can perfectly well […] claim to be granted a Skills and Talents residence permit. You seemed to be claiming that [the bill's terms] require [the highest degree] to obtain [such a] permit. You should know that, if a foreigner has the necessary talent to join an agricultural business that requires a certain amount of experience in picking [strawberries], [the bill] precisely provides a perfectly dignified response […]. Manual workers will be eligible for this residence permit if their project is of interest to France or their country of origin […].[71]

This statement is consistent with another that was made a month and a half earlier by Thierry Mariani, the Rapporteur for the FNA's Legal Affairs

[69] "Selective immigration...," *op. cit.*, January 2006, table 11, p. 23, and table 14, p. 28.

[70] His grandfather was a carpenter. Cf. Nice Côte d'Azur Archives Department (ed.), *Nice 1915: l'Italie entre en guerre*, exhibition catalog, St-Laurent du Var: Édition de la Ville de Nice, September 2015, p. 20; http://archives.nicecotedazur.org/wp-content/uploads/2019/04/catalogue-expo-nice-1915.pdf (Accessed April 2, 2025).

[71] *JORF*, FS, full report, session of June 15, 2006, No. 59, p. 4765; http://www.senat.fr/seances/s200606/s20060615/s20060615.pdf (Accessed April 2, 2025).

Committee. An amendment submitted by Communist MPs Patrick Braouezec and Muguette Jacquaint (one of only three MPs of working-class origin in the FNA between 2002 and 2007) then proposed renaming the card "Any Type of Professional Skills or Talents,"[72] to explicitly include professions "*which do not require a high level of qualification in terms of length of study*," primarily "*manual skills*" – seen as characteristic of working-class people. Rejecting the amendment, the Rapporteur Mariani retorted that the ST card already covered "*all types of skills and talents*." However, he soon contradicted himself stating that "*builders*" [*maçons*], like "*all skilled employees*," fall under the standard scheme of the "Employee"/"Temporary Worker" residence permit detailed elsewhere in the bill. He then justified this "*difference in treatment*" on the basis of a difference in "*merit*."[73] This merit-based justification for the selection of foreigners is not new, as it can be found in the context of asylum applications (Thibault 2012) or French naturalization procedures (Mazouz 2012). However, this justification rests on a distinct definition of merit, which is not grounded in docility or loyalty, but in the traditional criteria of meritocratic excellence: degrees (including, in this case, those obtained in the country of origin) as well as professional and social success. These criteria appear to be equally valid for foreigners as they are for French nationals, but only insofar as the former are not yet on national territory and are identified as upper-middle class.

The application circulars, which provide detailed governmental guidance on the implementation of legislation, themselves continued to maintain the ambiguity about the socio-professional contours of "skills and talents." A February 2008 circular took up Minister Estrosi's idea of the total absence of legal exclusion: "*The ST card covers a vast field of potential beneficiaries, no skill or talent being excluded a priori*."[74] Nevertheless, the appendix contained two model letters for the issuance of residence permits that specified identically the targeted professional fields and thus defined the scope of beneficiaries. These models seem to have been taken over unchanged by consular services, as illustrated by the letter sent by a French Consulate General in Africa to an ST card beneficiary (Illustration 1). Eight main categories of "*projects*" were listed, which primarily concerned upper socio-professional categories and, secondarily, self-employed workers and athletes. Clearly, none of these categories concerned manual workers. The immigration category of talent thus contributes to a double standard in the treatment of foreign workers based on socio-professional category and, ultimately, social class, which reserves

[72] Amendment No. 502, FNA, May 2, 2006; https://www.assemblee-nationale.fr/12/pdf/amendements/2986/298600502.pdf (Accessed April 2, 2025).

[73] *JORF,* FNA, full report, 1st session of May 5, 2006, No. 40 (1), pp. 3045-7; https://www.assemblee-nationale.fr/12/pdf/cri/2005-2006/20060209.pdf (Accessed April 2, 2025).

[74] "Circulaire précis[ant] les conditions [de] délivrance de la CCT…," IMI/G/08/00017/C, Ministry of Immigration, Integration, National Identity and Co-development, February 1st, 2008, p. 2; http://www.gisti.org/IMG/pdf/norimig080017c.pdf (Accessed April 2, 2025).

ease of movement for so-called highly skilled workers while conversely restricting the movement of so-called low-skilled ones (see Comte 2025, in this issue), even when the latter appear equally economically desirable.

Illustration 1 Letter Granting the ST Card, in Application of the 2008 Circular

CONSULAT GENERAL DE FRANCE A

, le 2012

Monsieur ,

Vous avez demandé la délivrance de la carte de séjour « compétences et talents » prévue à l'article L. 315-1 du code de l'entrée et du séjour des étrangers et du droit d'asile.

Vous avez présenté un projet, qui appartient au cadre

a. ☒ « création d'œuvres de l'esprit »
b. ☐ « humanitaire »
c. ☐ « monde du spectacle »
d. ☐ « sportifs et entraîneurs de haut niveau »
e. ☐ « universitaires, scientifiques, enseignants et chercheurs »
f. ☐ « entrepreneurs, ingénieurs, cadres supérieurs, industrie, commerce, services »
g. ☐ « professions indépendantes »
h. ☐ « medias et communication »
i. ☐.....

(plusieurs cadres peuvent être simultanément retenus)

Au vu de votre projet, et des autres pièces de votre dossier de demande incluant votre engagement à retourner dans votre pays d'origine au terme de six années, j'ai décidé de vous délivrer ce titre de séjour.

However, beyond the eight predefined categories, it is worth noting that the model letter authorizing the issuance of an ST residence permit also provided a particularly significant open ninth category. This reflects the broad "discretionary power," in the sense of a margin of maneuver left by legal texts regarding the conditions of their application (Lipsky 1980; Spire 2008, 63-88), accorded to consular services in interpreting the boundaries of "skills and talents" and, more broadly, in granting this visa.

3.3 Excluding the "Grey Area" of Intermediate Occupations

It is only with the Talent Passport that the socio-professional boundaries of talent began to take shape legally: Looking at the ten categories that make it

up,[75] it now almost exclusively concerns various fractions of the upper-middle class, from the most economic (company founders, innovative project leaders, investors, social agents) to the most cultural (researchers, professionals in the arts and culture, individuals of international renown), as well as the technocratic fractions (qualified private-sector employees earning a gross annual remuneration of at least €37,000, i.e., the threshold for the first decile of the salary distribution for managers in France).[76] The only exception, in 2016, concerns professional athletes, who are classified by INSEE as part of intermediate occupations, being more likely to have low levels of education. They are included in the TP as "Individuals of international renown," who may be active in the scientific, literary, artistic, intellectual, educational, or sporting fields[77] (in that order). However, although included in theory, they seem to be largely excluded in practice. This is illustrated by the fact that the only sportsman to have been a member of the STNC himself opted for another residence permit to enable a non-EU athlete he was training to stay in France, due to the difficulties encountered. As he explained during our interview, "*She was initially advised to apply for a Talent Passport, but, in the end, we found a simpler way.*"

The same paradox can be found in the words of the head of the visa department of a French consulate in Africa: While the target audience for the Talent Passport ranges, in his words, "*from sportsmen to senior managers, well, top managers*" [*cadres sup' sup'*] (following an ascending continuum of social positions from intermediate occupations to corporate executives), he goes on to explain that he has never seen a TP application from a sportsperson since taking up his position almost two years ago. This deputy consul also points out that the "*margin of appreciation*" of visa officers – in other words, their discretionary power – contributes, on the pretext of combating fraud, to excluding from the benefit of the residence permit individuals who, in their country of departure, are professionally at the frontiers of the upper-middle class, as conceived in the country of destination:

> That said, we have our margin of appreciation, which means that [...] the applicant who is a pizzaiolo at the pizzeria in [Timbuktu],[78] [even if] he has a proper contract in France [with a high salary] and all that, [...] he's not in the spirit of the Talent Passport, [so] we're going to refuse him. I mean, it

[75] The 2016 law created 10 categories of TP. A subsequent law (Law No. 2018-778 of September 10, 2018, for controlled immigration, an effective right of asylum and successful integration) detailed the first of these by including employees of innovative companies, sometimes considered an 11th category.

[76] Apec, "Baromètre 2023 de la rémunération des cadres," June 2023, p. 3; https://corporate.apec.fr/files/live/sites/corporate/files/Nosétudes/pdf/barometre-2023-de-la-remuneration-des-cadres (Accessed April 2, 2025).

[77] The 2018 law mentioned above added the craft field to this list, which also comes out of the upper socio-professional categories. The analysis that follows concerning the factual exclusion of sportspeople from TP benefits seems equally applicable to craftspeople.

[78] The name of the city has been changed to preserve anonymity.

> must also be consistent with his background and professional experience [...]. I say that because it's already happened. It can be more tangent in certain professions that border on the highly qualified, but there can also be [...] abuses of procedure in fact. [...] Pizzaiolo is obviously an exaggeration. [But, for example,] the applicant will be accepted [in France] for a position as a computer engineer, and here, he's in a technician position, well at technician level, so it's more of a grey area [...]. We can have refusals on this, where we feel that the applicant's profile doesn't seem to correspond with what we might expect of him on this type of visa.

What this deputy consul describes as a "*grey area*" are in fact the intermediate positions in the social space, be they small restaurant owners or technicians. The exclusion of this "*grey area*" from the TP's perimeter is achieved through reliance on the "*spirit of the Talent Passport*" as there is no basis for it in the letter of the legislative and regulatory texts, which in no way make TP granting conditional on the prior occupation of a position of the same socio-professional level in the country of departure. This so-called spirit enables administrative officers to "translate their interpretation of situations into the language of the regulations" (Dubois 2009, 32), creating additional "implicit" criteria that neither the government nor the legislator had implemented or anticipated (Spire 2008, 85-8). This then contributes to the bureaucratic construction of the social homogeneity of the talent immigration category, and to reserving the exclusive benefits offered by the Talent Passport for members of the upper socio-professional categories, thus turning the latter into a class privilege.

While this article has focused solely on an analysis of the immigration category of talent through the prism of class due to its centrality, it should be stressed that this could be supplemented with further socio-historical studies based on other social relations. For example, the negative social judgment formulated by the deputy consul regarding the "*pizzaiolo from [Timbuktu]*" and his bureaucratic exclusion from the scheme is based not only on socio-professional occupation and social class, but also on race and geographical origin, because he comes from both a post-colonial country and an economically and culturally marginal town. Moreover, this negative social judgment is gendered. It is no coincidence that the visa applicant is imagined as a man, since the profession of chef/small restaurant owner is predominantly male in both the countries of origin and of destination. The majority of economic TP beneficiaries are also men (Thibault 2024), and the "suspicion weighing on all foreign applicants for legal documents" (Spire 2008, 9) is primarily exercised on male applicants. A more in-depth analysis of the immigration category of talent would thus necessitate varying and articulating social relations to reveal how a definition of high desirability in immigration has been historically constructed at the crossroads of class, gender, geographical origin, and race dimensions.

4. Conclusion

In France, the overlap between the (still relatively recent) immigration category of talent and the upper INSEE socio-professional categories was by no means spontaneous. It is the product of a joint governmental, parliamentary, and bureaucratic effort that gradually clarified, sometimes shifted, and continually restricted the boundaries of the initially overly vague potential population of talents. This population, far from predating the implementation of this public policy, was first created through a performative act of enunciation. While this performative dimension is characteristic of political action in general, which consists of "making or unmaking groups" (Bourdieu 1981), it is even more singular and all the more apparent in the case of a foreign population that, despite the economic and cultural resources of its members, is very much an "object class": Like the dominated classes, foreigners belonging to upper socio-professional categories find themselves "dominated even in the production of their image of the social world and consequently their social identity;" they "do not speak, they are spoken" (Bourdieu 1977, 4). The apparent paradox of a near-perfect overlap between the boundaries of an international public policy category aimed at foreign nationals and a very national conception of social stratification, as represented by the INSEE socio-professional nomenclature, can thus be explained by the fact that the immigration category has been largely shaped within a national framework by French-born members of the upper-middle class. Therefore, it can be hypothesized that other national contexts may be conducive to alternative bureaucratic ways of thinking about talent or hierarchizing foreign populations (on the German case, see Beronja 2025, in this issue), which calls for further socio-historical investigations.

By integrating intellectual fractions, focusing on economic fractions, and excluding students and workers from the working and lower-middle classes, the immigration category came to widely embrace, at least on paper, the social category of the upper-middle class. However, the overlap between administrative category and social class is not absolute, and the discrepancies also deserve analysis. Indeed, such a bureaucratic invention does more than simply mirror social stratification; it also participates in a "new representation of the social world" (Boltanski 1982, 179) and, more specifically, in redefining the "symbolic boundaries" (Lamont 1992) of the dominant social group. On the one hand, while the Talent Passport currently benefits only foreign workers in France's upper socio-professional categories, this does not mean that all foreign workers in the upper socio-professional categories effectively benefit from the Talent Passport. In addition to the fact that it is logically unlikely that it would be granted to foreign civil servants, the residence permit also excludes regulated private-practice professions [*professions*

libérales] such as the legal profession (lawyers, notaries, etc.).[79] Moreover, as the main eligibility criterion for the Talent Passport is financial, members of the upper socio-professional categories with low salaries are de facto barred from applying, which affects public-sector workers more than private-sector workers, and women more than men, given career and salary inequalities. Finally, highly qualified workers who could be eligible for the Talent Passport sometimes do not benefit from it, whether through convenience, lack of knowledge, or misunderstandings on the part of their employer (Thibault 2025), which is notably the case for some contracted PhD students. On the other hand, while the Talent Passport is legally open to artists and engineers alike, this does not mean that both benefit from it in the same proportions. For example, out of almost 12,000 first issues of economic TP in 2022, fewer than 200 places went to artists and internationally renowned individuals, respectively.[80] By shifting the central criterion for belonging to the dominant social group from the level of education to the level of income, and consequently prioritizing the economic fractions over the cultural fractions of the upper-middle class, the Talent Passport both formalizes and contributes to the transformation of capitalism and social hierarchies.

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[79] The Law No. 2024-42 of January 26, 2024, to control immigration, improve immigration, (https://www.legifrance.gouv.fr/download/pdf?id=h1hWgkFVBQxe8aaVItdG51sDFihSq-tW46KWa2ISZzs= [Accessed April 2, 2025]) created a new category of "talent" specific to the "medical and pharmaceutical professions," which until then had been included in theory but excluded from the scheme in practice. At the time of finalizing this article, however, the implementing decrees for this reform had not yet been issued.

[80] DSED/DGEF data made available to the author by the Department of Statistics, Studies and Documentation (DSED) of the General Directorate for Foreigners in France (DGEF) under a partnership agreement.

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When European Citizens Become a "Burden" … Negotiations on Social Rights at the Court of Justice of the European Union (1998–2015)

Nikola Tietze *

Abstract: *»Wenn Unionsbürgerinnen zu einer ‚Last' werden… Verhandlungen über soziale Rechte am Gerichtshof der Europäischen Union (1998–2015)«.* The article looks at the relationship between social rights and labour mobility under the European Union citizenship regime. It asks what concept of social citizenship is associated with European freedom of movement and how this relationship has evolved during the 2000s and 2010s. To answer these questions, documents related to three judgments of the European Court of Justice (ECJ) were scrutinized. After their contextualisation in regard to ECJ case law, the three judgments are presented from a sociological point of view and on the backdrop of social policy transformations in the EU member states. Part 3 considers the arguments in regard to the determination of worker status, the scope of the non-discrimination principle, and the social entitlements that plaintiffs were granted or denied. The article concludes that the actors at the ECJ (judges, advocates general, and representatives of the Commission and of member states' governments) first asserted a social citizenship approach to labour mobility and subsequently dismantled it. The overall process revealed that intra-European migrant workers' social citizenship was considered in a fragmented and at the same time flexible manner that can be adjusted to fit changing labour market policies and economic objectives.

Keywords: Social citizenship, European Court of Justice, female single-parent, migration trajectories, employment biographies, systemic discrimination.

* Nikola Tietze, Centre Marc Bloch, Friedrichstraße 191, 10117 Berlin, Germany; nikola.tietze@wiku-hamburg.de; ORCID iD: 0009-0001-1281-711X.

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1. Union Citizens' Social Rights and the Court of Justice of the European Union (ECJ)[1]

This article looks at the relationship between social rights and labour mobility, which are also the topics of Hugo Mulonnier's and Ferruccio Ricciardi's contributions to this special issue. However, it examines this relationship in the light of the European Union (EU) regime. The aim is to grasp the social dimensions of European citizenship that have been a fundamental element of this regime since the Maastricht Treaty of 1992. The questions focused on are what concept of social citizenship is associated with European freedom of movement and how the relationship between the two has evolved during the 2000s and 2010s, a period characterised by the two enlargements of the EU in 2004 and 2007 and by the discussions heralding Brexit in 2020. The ECJ is a central institution of the EU regime, and, in this respect, it is essential for both the European regime of labour mobility and the social rights granted to European citizens (Scharpf 2009). Its case law sets out the right of European citizens "not only to move, but also to *reside* in every Member State" (conclusion of the Advocate General, María Martínez Sala v Freistaat Bayern judgment of 12 May 1998, point 18). Furthermore, it controls and develops, through its case law, the rules governing access for mobile European citizens to social rights and benefits in the member state of their respective residence country. From a sociological perspective, the actors who participate in the case law concerning these rules are first of all the judges and advocates general of the ECJ, but also the European Commission and the governments of the member states who intervene through written and oral observations before the ECJ. In this way, they contribute to the conception of social citizenship in the EU system. The analysis on the following pages focuses on these actors and the arguments they use to combine the mobility of European citizens with access to social rights and benefits or, on the contrary, to dissociate intra-European mobility from guarantees of such access.

The article is based on a study of the written and publicly available documents surrounding three ECJ judgments: (i) C-85/96 María Martínez Sala v Freistaat Bayern of 12 May 1998 (C-85/96), (ii) C-333/13 Elisabeta Dano and Florin Dano v Jobcenter Leipzig of 11 November 2014, and (iii) C-67/14

[1] This text could not have been written without the support and advice of many colleagues. I would like to thank in particular Christoph Krenn for our collaboration in data collection. His support and advice were fundamental, especially for the second part of the article. The writing of the article, in particular the analytical framework of social citizenship and non-discrimination, benefited significantly from the team of the ANR-DFG project *Access Plus*. My thanks go in particular to Olivier Giraud, Marie Mercat-Bruns, Arnaud Lechevalier, and Ferruccio Ricciardi.

Jobcenter Berlin Neukölln v Nazifa Alimanovic and others of 15 September 2015.[2] The three judgments, following requests for preliminary rulings from German courts, concern disputes over social benefits (family allowance and unemployment benefits) that the European citizens of Spanish, Romanian, and Swedish nationality, residing respectively in Nuremberg, Leipzig, and Berlin, had applied for from the competent local authorities. In the studied documents, the judges, the advocates general, the representatives of the European Commission, and those of the governments of the member states mobilised legal arguments around three issues: defining the status of workers, determining the scope of the principle of non-discrimination on the basis of nationality, and qualifying the nature of the social rights to which mobile European citizens have access. The hypothesis is that the different arguments in relation to these issues provide us with information both (i) on the determination of who is entitled to rights at the given moment of the case in question and (ii) on the evolution of the authors' conceptions regarding the relationship between social rights and labour mobility in the period covered by the three judgments, i.e., between 1998 and 2015.

The documents studied below are part of a data collection relating to twelve cases brought before the ECJ between 1998 and 2015; they were gathered in collaboration with the legal expert Christoph Krenn. All these cases relate to requests for preliminary rulings concerning the European citizens' access to family and unemployment benefits in the member states of their respective residence. The data is made up, on the one hand, of the texts drafted by the judges and advocates general of the ECJ. These texts are available on the ECJ and EUR-Lex websites.[3] Secondly, we have studied the written observations of the European Commission and those of the member states that participated in the twelve cases by submitting observations to the ECJ before oral deliberation. These written observations were received through the Commission based on requests for access to documents (Regulation [EC] 1049/2001). The documents relating to the twelve cases have made it possible to trace, in part 2, the trajectory of case law concerning European citizenship and its social dimensions from 1998 to 2015 (Krenn 2021).

In the following part, I draw on this trajectory to contextualise the three judgments Martínez Sala (1998), Dano (2014), and Alimanovic (2015). The choice of the three judgments is justified, firstly in legal terms. The Martínez Sala judgment marked the beginning of case law on European citizenship. The Alimanovic judgment introduced the possibility for the Member States' social administrations to refuse non-contributory social benefits to mobile

[2] Hereafter, the three judgments will be referred to as Martínez Sala, Dano, and Alimanovic for better reading.

[3] See case law on the homepage of the ECJ, The court of justice of the European Union, https://curia.europa.eu/jcms/jcms/j_6/en/ (Accessed April 4, 2025) or on EUR-Lex https://eur-lex.europa.eu/browse/institutions/justice.html. (Accessed April 4, 2025).

European citizens if these citizens are unemployed. It has relativized the principle of non-discrimination and thus the priority of the EU-citizenship norm. Secondly, the three judgments concern three women who had to bring up their children alone and had difficulty finding stable employment. The third part of the article is devoted to a description of the sociological and political specificities that the women's situations implied for establishing the relationship between social rights and labour mobility.

The data collected on the three judgments was considered as a corpus of texts, written by different authors at different times. The first reading of this corpus made it possible to identify the issues that the actors in the ECJ renegotiated on the occasion of each case. Among these issues, the ones concerning the definitions of worker status, non-discrimination, and the nature of the social rights to be granted (or denied) are central and recurrent. In a second reading of the corpus, I have distinguished the arguments of the various protagonists at the ECJ in relation to these three issues. The fourth part of the article scrutinizes these arguments and their evolution across the three judgments.

Social citizenship through worker status, non-discrimination, and social rights

From a historical and sociological perspective, worker-status, non-discrimination, and social rights each relate to a specific dimension of social citizenship. Social citizenship is based on individual participation, through work, in the tools for managing social risks (Supiot 1999; Supiot and Kesteman 2015) and thus in "social property," which is shared by non-owners of private property and provides a right of access to collective goods and services (Castel 2008a). Social citizenship then raises the question of what forms and configurations of work (employment, subsistence, care labour, duration, continuity, or location of the activity) are considered to be participation in social property and determine worker status. In the democratic system enshrined in the EU-treaties, social citizenship implies equality in guaranteeing citizens' social rights. To ensure this equality, social rights need to be "redeployed at the level of concrete situations" (Castel 2012, 117). According to the French legal expert Robert Lafore (2014), non-discrimination represents an "ordering mechanism" "which operates as a reference point for judging any contradictions between a given framework (access to employment, training, housing, establishment of rights and benefits, etc.) and the standard of equal treatment" (Lafore 2014, 26). In this respect, non-discrimination on grounds of nationality represents an EU-instrument serving the EU citizens' integration into the "society of fellow human beings" (*société de semblables*), "linked by relations of interdependence" (Castel 2012, 115). The question is then what particularities need to be considered in order to grasp the concrete situations of mobile European citizens and how to relate their particularities to the European norm of equal treatment.

Social rights offer a range of different categories: inter alia (i) insurance rights acquired through employees' contributions to social security schemes, (ii) assistance rights financed by taxpayers and requiring recognition of a specific need, and (iii) (in the EU since 2004) "special non-contributory benefits for the unemployed" similar to assistance rights but linked to the search for employment. The three categories of rights represent concrete levers for social citizenship. However, each one is linked to different conceptions of social citizenship's objectives. In the context of social citizenship, which is supposed to protect against negative effects of the logics of the market, the coordination and overlapping of the various social rights have the function of protecting individuals against "unilateral relations of subjection" (Castel 2008b, 135; see also Fraser 2010). When social citizenship is conceived as a product of the market (Lechevalier 2018, 8-9), it is, however, essentially based on insurance rights. Assistance rights and special non-contributory benefits for the unemployed constitute social assistance for people "camping on the edges of wage society" (Castel 2022 [1995], 597). In the context of social citizenship as protection against the market or as a product of the market, social rights refer in one way or another to collective societal responsibility (Esping-Anderson 1990). By contrast, they are essentially a matter of individual responsibility when they are seen as facilitators of market competition (Lechevalier 2018). The classification of a social benefit in one of the three categories of social rights thus refers to different conceptions of social citizenship.

2. The European Court of Justice – An Arena for Negotiating Social Citizenship

The European Court of Justice in Luxembourg reviews the application of the principles of freedom of movement laid down in the European treaties. Through its case law, it has contributed significantly to the coordination of the member states' social security systems as well as to the development of social provisions of the European integration. Between 1964 and 1990, it delivered judgments in almost 400 cases involving matters of social security (Loth 2020, 15). One of the ways in which it fulfils its role is by responding to requests for preliminary rulings from national courts concerning the application of European law (treaties, directives, and regulations) in and by the member states. In this respect, the case law in which the ECJ rules on the access of mobile workers and European citizens to social rights and benefits forms an institutionalized and post-sovereign interface between the EU's welfare state constitution and the member states' social policies (Jureit and Tietze 2016; Tietze 2018). In sociological terms, the ECJ represents an arena for

negotiation on the European regime of labour mobility because the various actors mentioned above contribute to the decision-making process before and after a national court's request for a preliminary ruling.

In academic literature, the ECJ has repeatedly been described as the engine of the European project and the linchpin of legal integration at the supranational level (Vauchez 2010, 2015). According to Fritz W. Scharpf (2012), the ECJ is an institution that erects, in the "perpetual momentum" of its jurisprudence, the individualism of freedom-of-movement rights against the "social market economies" of member states (Scharpf 2012, 131; see also Schreurs 2023). Here the Court appears as a homogeneous and univocal institutional actor. On the one hand, its case law has linked individual freedom of movement for workers to social citizenship dimensions. With other judgments, it has, on the other hand, promoted the liberalisation of economic relations within the European Community (EC) and the EU's commodification (Scharpf 2012). Compared to national and many international courts, the ECJ is a complex institution that is supported by various protagonists with different perspectives on individual freedom of movement rights and on social and economic ordering in the member states.

2.1 Protagonists of the Negotiations at the ECJ

Among the diverse and opposing protagonists that interact through the institution ECJ, the actors in a specific local dispute (plaintiffs, defendants, and their lawyers) and the national courts that serve as a forum for their claims must first be mentioned. They influence when and on what basis the advocates general (through their opinions) and the judges (through their judgments) decide on mobile EU citizens' access to social rights. They can construe a conflict over access to social rights in such a way that it is (or is not) framed as a problem of coordinating European national social security systems or as a problem of discrimination based on nationality or the principle of equal pay of women and men. The problem is (or is not) then brought to the ECJ in the form of a request for a preliminary ruling. In her PhD thesis on the ECJ's contribution to social justice between 1970 and 1990, Mala Loth described how Italian lawyers in welfare organisations and trade unions constructed disputes about the pensions of Italian migrant workers and their families in Belgium or Germany in the 1970s in order to bring these disputes to the ECJ. "Italian migrants often became the pioneers of the case constellations European jurists pondered over" (Loth 2020, 91). The judges of national labour and social courts can also become protagonists in the Europeanisation of welfare state conflicts if they decide to submit requests for preliminary rulings to the ECJ and formulate questions on the legal claims of mobile European workers and citizens. The Alimanovic case (2015), which is part of the text corpus analysed in more detail below (parts 3 and 4), is one example. In

this case, the judges of the German Federal Social Court in Kassel attempted to clarify the scope and social law consequences of the preceding Dano judgment that had been considered "open to several readings" (Ilopoulou-Penot 2016, 1009). The representatives of national jurisdictions tend to rely on the ECJ from a legal doctrinal perspective, whereas the trade union or association lawyers mentioned above saw European law and the requests for preliminary rulings more as a "weapon" (Israël 2009) in the fight for social security for migrant workers and their families.

Another group of players at the ECJ comes into play when a request for preliminary ruling has been sent to Luxembourg. In every case, a judge rapporteur is assigned to provide a draft judgment, which is then discussed and decided on within a group of judges. Depending on the importance of the case, three, five, fifteen, or all twenty-seven judges deliberate and vote on the judgment. Neither the rapporteur's draft judgment nor the individual opinions of judges are published, only the final judgment (Krenn 2022a, 2022b). The ECJ also includes the advocates general, who summarise the legal arguments in the proceedings and give their opinion on the case. Furthermore, several EU institutions have the right to participate in EU proceedings by submitting written and oral observations. The most important player is the European Commission, represented by its legal service, which participates in almost every case. Governments of the member states that wish to comment on a case may also participate through written and/or oral observations. The written observations of the Commission and the national governments as well as the opinions and judgment texts in the three cases Martínez Sala, Dano, and Alimanovic form the corpus of texts that have been analysed for this article.

Since the 1970s, the ECJ, as a European institution, has stood for a space in which different, sometimes conflicting interests clash with regard to the access of migrant workers (and, since 1992, European citizens) to social rights.

2.2 Historicity of the European Jurisprudence

Negotiations are historically situated. The Court's quality as a negotiation arena comes into play not only for a specific case, but also across several cases – in so called jurisprudential chains. In this respect, European jurisprudence is not a linear process through which the European institution of the ECJ has expanded the realm of individual rights and "placed [them] beyond the reach of democratic self-determination" (Scharpf 2012, 134). The development of European citizenship case law since the end of the 1990s has clearly demonstrated this shift (Krenn 2021). The introduction of EU citizenship in 1992 indeed raised the question for a number of national jurisdictions as to the extent to which EU citizens without clear worker status could be treated less favourably than nationals with regard to social rights. As a result, between 1998 and 2015, the ECJ ruled in a series of preliminary ruling

requests on the equal treatment of mobile EU citizens who fell outside the traditional categories of free movement of labour.[4] The main focus of these requests was on the EU citizens' access to non-contributory basic benefits, guaranteeing a livelihood in the respective member state (e.g., the Belgian minimex in C-184/99 Grzelczyk and C-45 6/02 Trojani), unemployment benefit for job seekers without sufficient periods of employment or after the standard period of contribution-based unemployment insurance had expired (e.g., in C-22/08 and C-23/08 Koupatantze or in the Dano and Alimanovic judgments, the German safety net basic income [*Grundsicherung*, which has now been replaced by the so called *Bürgergeld*]), or a non-contributory supplement for periods of parental leave or for pensioners (e.g., the child-raising allowance in the Martínez Sala judgment discussed here or the Austrian compensatory supplement in C-140/12 Brey). Case law on equal treatment in the realm of access to social benefits from 1998 to 2015 provides a specific timeline for retracing the conception of European social citizenship and, beyond that, the development of the European welfare order.

2.3 A Timeline of Jurisprudence on Social Citizenship

According to this timeline, European citizenship was initially consistently linked to the principle of equal treatment. This opened up access to non-contributory social rights for mobile EU citizens as the Martínez Sala judgment (1998) demonstrates. With the judgments C-184/99 Gryzelcyk (2001) and C-456/02 Trojani (2004), the ECJ drafted two elements for a welfare state order in the EU on the basis of the EU treaties, i.e., European primary law. Firstly, the ECJ introduced the obligation to examine on a case-by-case basis whether an EU citizen may lose their right of residence if he or she cannot prove that they have sufficient resources and health insurance cover and have to apply for social assistance (art. 7 of the directive 2004/38/EC, former regulation 1612/68/EEC). Secondly, it explained that European law establishes "a certain degree of financial solidarity between nationals of a host Member State and nationals of other member states" (C-184/99 Gryzelcyk, point 44). This financial solidarity justifies the access to non-contributory and tax-financed social assistance benefits for mobile EU citizens and represents a form of contribution to the EU citizens' "social property" (Castel 2008a).

In the judgments C-22/08 and C-23/08 Vatsouras and Koupatantze (2009), the actual connection of the jobseeker(s) to the labour market was made then a condition for the application of the principle of non-discrimination. The reference point for the principle of equal treatment of EU citizens was now

[4] In chronological order: C-85/96 Martínez Sala, C-184/99 Gryzelcyk, C-413/99 Baumbast and R, C-200/02 Chen Zu, C-456/02 Trojani, C-22/08 and C-23/08 Vatsouras and Koupatantze, C-209/03 Bidar, C-34/09 Zambrano, C-424/10 and C 425/10 Ziolkowski, C-140/12 Brey, C-333/13 Dano, C-67/14 Alimanovic.

employee status (and not EU citizen status) and, in this respect, the social security contributions paid and to be paid in the foreseeable future. The judgment C-140/12 Brey (2013) declared that the unequal treatment of so-called non-active EU citizens was legal. However, it emphasised that this discrimination must be examined on a case-by-case basis and cannot be inferred automatically. Access of mobile EU citizens to social rights was thus linked to sufficient resources and existing health insurance cover on the basis of secondary law (art. 7 2004/38/EC). The legalisation of unequal treatment was extended to EU citizens who had first been classified as non-employable on the labour market through the Dano ruling (2014) (Blauberger et al. 2018; Davies 2018; Pataut 2015; Thym 2015a, 2015b). The Alimanovic judgment (2015) abolished the obligation to examine individual cases of EU citizens who were unable to prove their employability over the course of a year. It removed then the barrier to discriminating against non-employed or precariously employed EU-citizens' with respect to access to social benefits. EU citizen status was no longer the point of reference for assessing access to non-contributory and tax-financed social benefits, nor was it considered the point of reference for financial solidarity between member states.

The timeline outlines first the development and then the dismantling of the social security protection of European citizenship between 1998 and 2015. In this respect, it refers to normative shifts in the judgments of this period (Pataut 2018). These shifts reshaped the relationship that the ECJ had established between the social rights of EU citizens and their right to residence at the end of the 1990s. These changes are embedded in a specific social and political context.

3. The "Metamorphoses of the Social Question" before the European Court of Justice: Three Judgments Revisited

The early social law jurisprudence concerned migrant workers in industry (Severin-Barboutie 2019; Tietze 2022a; Wieters and Fertikh 2019). The plaintiffs, mostly men, whose cases were brought before the court in the 1970s were primarily unskilled and poorly paid workers. The latter "paid for the hard labour they did with massive occupational health hazards and subsequent problems which assumed the legal shapes of early retirement, disability pensions, survivor's pensions, aggregation, and cross-border transfers" (Loth 2020, 91-2). In the social law preliminary rulings from the 1990s onwards, after the introduction of European citizenship, the characteristic claimant profile consisted of the unemployed and jobseekers as well as needy trainees and students. From then on, conflicts over early retirement,

disability pensions, survivor's pensions, aggregation, and cross-border transfers disappeared from the ECJ's negotiating arena. The judgments no longer addressed traditional issues of coordination of national social security systems, i.e., the organisation of social rights acquired through employment and contributions (regulation 1408/71/EEC and later 883/2004/EC). The protagonists at the ECJ, in particular those concerned with European policies on labour mobility (see part 2), instead negotiated the relationship between contribution-based, de-territorialised insurance rights and non-contributory and tax-financed rights of territorialised social assistance (Fertikh 2020). They dealt with social situations of intra-European mobility that could not be grasped with the "guiding character[s] of the European" – the European worker, consumer, and educated citizen (Eigmüller 2021). In a number of cases, they were also concerned with the life situations of female single-parents, which contradicted the male bread-winner model of the west-European welfare states.

The "metamorphoses of the social question" (Castel 2022), which had resulted from economic developments and changes in the labour markets since the late 1970s, particularly affected those who had already camped "on the edge of the wage society" and thus lived on the periphery of the European integration project in the 1990s: immigrants and their families, women, young adults without vocational qualifications, workers who were unable to cope with upcoming retraining due to disability or their age, etc. (ibid., 597), and, as can be added from the European perspective, citizens from economically weak accession countries. The case of María Martínez Sala v Freistaat Bayern of 12 May 1998 (C-85/96) illustrates this. It is an example of the consequences of unemployment and precarious employment with regard to the protection of the children (daughters) of former so-called guest workers in Germany.

The Spaniard María Martínez Sala was born in 1956.[5] In 1968, she followed her parents to Germany, where they had been living as so-called guest workers since 1966. In 1972, at the age of 16, she went to Valencia (Spain). She returned to Germany in 1974, where she was employed with various interruptions from 1976 onwards. Until November 1986 and between 12 September and 24 October 1989, she was compulsorily insured through various jobs. During her time as an unemployed person, she received social assistance from the City of Nuremberg and the Nuremberg Regional Council.

After the birth of her second child, she applied for a child-raising allowance, a non-contributory social welfare benefit, in January 1993. This tax-financed benefit was refused on the grounds that Mrs Martínez Sala did not have German nationality, nor residence entitlement or a residence permit. Indeed, María Martínez Sala, who had

[5] The boxed text as well the two following ones are based on data provided by the judgments, opinions, and written observations of C-85/96 María Martínez Sala, C-333/13 Elisabeta Dano, and Florin Dano and C-67/14 Alimanovic.

become a national of an EC member state in 1986 as a result of Spain's accession, had not held a residence permit for the Federal Republic of Germany since 1984, but only certificates of (unanswered) applications for the extension of her residence status.

María Martínez Sala appealed against the rejection of the child-raising allowance, first to the Nuremberg Social Court and then to the Bavarian State Social Court. The latter referred four questions to the ECJ for a preliminary ruling and asked for clarification as to whether María Martínez Sala should be regarded as a worker, have the same entitlements to social welfare as German citizens, and receive a residence permit, despite her unemployment and receipt of social welfare benefits.

In the capitalist market order, workers are those who successfully sell or attempt to sell their labour for remuneration (Welskopp 2017, 200). Labour is then seen as being transformed into work (Bänziger 2022, 133). This conceptual transformation excludes subsistence and care activities from the definition of work (Boris 2017). In principle, the nationality of the worker plays no role in the market-economy definition of worker status. Nevertheless, the quasi-simultaneous and mutually supportive developments of the consolidation of nation-states on the one hand and the emergence of welfare institutions on the other have led to worker status being acquired on labour markets that are imagined to be national (Bänziger 2022). The triple relationship established organisationally and legally between the transformation of labour into work, the organisational consolidation of the nation state and the emerging welfare institutions, gave rise to the idea of the "citizen-worker" around 1900, as Peter-Paul Bänziger (2022) has explained. The "citizen-worker" was generally understood as a man who earns his living based on "joyful efficiency" and as "a duty deriving from the privilege of national citizenship" (ibid., 136). The conception of the citizen-worker reinforced "the exclusion of other modes of making a living as non-work and thus, ultimately, non-national (and vice versa)" (ibid.). Nevertheless, thanks to this understanding, the nationally organised labour markets were opened up for the expansion of welfare-state measures (Kott 1996). In the 1950s and 1960s, this made it possible to determine worker status with the help of de-commodified elements (such as the crediting of periods of social security contributions). In the early European Communities and Western European member states, the welfare state and social citizenship were initially conceived in this respect as protection against market risks.

In the 1990s, not only had the labour market changed in Europe (Raphael 2019), but also social security systems became increasingly economised and commodified. In the EU and the economically strong western and northern European member states, the welfare state and social citizenship were now assessed according to the criteria of their capacity to increase market competitiveness (Lechevalier 2018; Tietze 2022a). With regard to the latter, access to social rights was transformed in the 2000s into a lever for the so-called

activation of the unemployed. These social and labour market policy developments met with structural social and territorial inequalities in the EU in the 2000s and 2010s (Castel 2006; Heidenreich 2022) and exacerbated systemic discrimination.

Systemic discrimination is generated on the basis of intentional and unintentional, yet seemingly neutral actions (Pécaut-Rivolier 2013; Mercat Bruns 2016, 2018). These actions combine, in a European perspective, (i) social stereotypes and prejudices, (ii) occupational and territorial segregation, (iii) disdain and disregard for certain jobs and subsistence activities as well as certain urban or European regions, and (iv) short-term and self-centred pursuit of economic profitability (for example through entrepreneurial investments without regard to social and ecological consequences in acceding countries) (Pécaut-Rivoliera 2013, 28). Systemic discrimination exacerbates poverty. In the socio-economic order of the EU's post-sovereign space from the 2000s onwards, discrimination can be grounded in belonging to an economically weak member state located on the EU's eastern or southern periphery (Heidenreich 2022; Jureit and Tietze 2016: Kovacheva and Cyrus 2020). Furthermore, structural and territorial inequalities are reproduced through disdain and disregard for activities such as looking for housing, legalising residence (applying for residence papers and freedom of movement permits), opening a bank account, registering with health insurance, enrolling children in school, learning a language, looking for work, etc. (Tietze 2023, see map Calinas Berlin). Social stereotypes and prejudices reinforce the socio-economic precariousness of mobile EU citizens (Davies 2018; Müller 2018; Ratzmann 2021). One example of the dynamic interdependencies between structural and territorial inequalities with systemic discrimination is the case C-333/13 of Romanians Elisabeta and Florin Dano against the Leipzig job centre (Tietze 2018).

Elisabeta Dano was born in Romania in 1989. She went to school there for three years but had no school-leaving certificate and no recognised vocational training. Until 2014, she had never worked in Germany or Romania in a job that is considered employment in the EU.

In 2011, she was living in Leipzig with her son Florin, who was born in Saarbrücken (Germany) on 2 July 2009. The city of Leipzig issued Elisabeth Dano an unlimited certificate of freedom of movement – the residence permit for EU citizens in Germany. Since her arrival in Leipzig, she lived with her sister, who also provided her with goods in kind. In addition to this family support, Mrs Dano received monthly child benefit (184 euros) for her two-year-old son. In addition, the Leipzig Youth Welfare Office transferred a monthly advance on maintenance payments (133 euros) for Florin, whose father is unknown.

Around two months after the city of Leipzig issued her a permanent residence permit, Elisabeth Dano unsuccessfully applied to the Leipzig Job Centre for basic income support for jobseekers in September 2011. In January 2012, Ms Dano again applied

for basic income support, but was again rejected by the Leipzig Job Centre. This time, Elisabeth Dano lodged an objection and, together with her son, filed a claim for basic income support with the Leipzig Social Court in July 2012.

The Leipzig social judges intended to uphold the rejection by the Leipzig Job Centre because Elisabeth Dano had never looked for work in Germany. However, they submitted a request for a preliminary ruling to their colleagues in Luxembourg, asking for a proper balance between the prevention of "an unreasonable recourse to non-contributory social security benefits" and the interdiction of discrimination "Union citizens in need from accessing those benefits, which are provided to their own nationals who are in the same situation" (C-333/13, point 45).

The European anti-discrimination principle, which was introduced on the basis of Article 48(2) of the Treaty establishing the European Economic Community in 1958, prohibited unequal treatment of workers on the basis of their nationality in a member state "as regards employment, remuneration and other conditions of work" and, from 1992 onwards, any unequal treatment "on grounds of nationality" within the scope of the European treaties (Art. 18 TFEU). The anti-discrimination principle involves a European coordination mechanism. This enables national citizen-workers who have become EU citizens to be placed in relation to one another and to be assessed in relation to their specific social situation.

EUR-Lex, the official website on EU law, explains: "Discrimination on the grounds of nationality has always been forbidden by the European Union (EU) treaties, as has discrimination on the basis of sex in the context of employment. The other grounds of discrimination [racial or ethnic origin, religion or belief, disability, age or sexual orientation, NT] were mentioned for the first time in 1997, with the signature of the Treaty of Amsterdam" (EUR-Lex, Access to European Union Law). Only the prohibition of discrimination on grounds of nationality and the obligation to ensure equal pay between women and men are protected by the European treaties. For the other grounds of discrimination, the Council of the European Union, together with the European Parliament, has decided on measures to combat discrimination (EUR-Lex, Access to European Union Law) with regard to gender equality since the 1970s and with regard to other grounds of discrimination since 2000 (directives 2000/78/EC and 2000/43/EC).

Against this legal background, the unequal treatment of Elisabeta Dano was in line with the European rules on free movement, according to the ECJ. The main argument was that the applicant could not prove that she had sufficient resources and health insurance coverage, as required by the Free Movement Directive 2004/38/EC (also known as Citizenship Directive), nor that she was looking for work and had a chance of being integrated into the labour market. In this respect, she was not entitled to exercise the right to free movement and therefore did not fall within the scope of non-discrimination on the grounds of nationality. Not only was the co-plaintiff Florin Dano, Elisabeta

Dano's underage son, and his right to a dignified life lost in the secondary legal argumentation of the judgment (Wallrabenstein 2016); the systemic discrimination that characterised the subsistence and care labour of the Romanian EU citizen Elisabeta Dano in the German city of Leipzig was also overlooked (Tietze 2022b).

The jobseekers and unemployed whose cases were dealt with by the ECJ after the introduction of EU citizenship often had non-linear migration trajectories. Their employment biographies were characterised by temporary jobs with low payment. As shown by surveys and interviews in social centres in Berlin and Paris (Giraud and Tietze 2024), they earned their living in a more or less legally protected labour market and often on the basis of strenuous and unhealthy jobs. Non-linear migration trajectories and fragmented employment biographies reduce overall protection through insurance rights and increase dependence on tax-funded social benefits as well as the likelihood of controls and sanctions through the social administration (Dubois 2021). This dependence and the control mechanisms were reinforced in the western and northern EU member states with powerful economies, including Germany, by social policies that attempted to "activate" the unemployed and jobseekers, i.e., to shorten the periods of economic safeguards through their insurance rights and to promote their employability, availability for the labour market, and personal responsibility within the framework of social assistance measures and with the help of negative sanctions (Betzelt 2011; Eydoux 2013; Marquadsen 2007; Rosa et al. 2017). The activation policy shift in social rights changed social citizenship by extending the realm of social assistance benefits based on needs assessments and not on rights. Last but not least, it has led to a number of conflicts as to whether the social security of mobile EU citizens should be viewed from a market and competition perspective and whether citizens' access to social benefits should be decided according to economic criteria. Case C-67/14 Jobcenter Berlin Neukölln v Nazifa Alimanovic and others is an example for this.

The Swede Nazifa Alimanovic was born in Bosnia in 1966. From there she first went to Berlin, where her three children, Sonita, Valentina, and Valentino, were born in 1994, 1998, and 1999 respectively. In 1999, Nazifa Alimanovic left Berlin and moved to Sweden. There she and her children acquired Swedish citizenship. After almost 11 years, Nazifa Alimanovic returned to Berlin with her children, where she received an unlimited certificate of freedom of movement and residence permit on 1 July 2010.

Nazifa Alimanovic and her daughter Sonita were employed in various jobs for a little less than a year between June 2010 and May 2011, while the two younger children Valentina and Valentino went to school in Berlin.

She and her daughter Sonita received a tax-financed basic provision for long-term unemployed between 1 December 2011 and 31 May 2012. Mrs Alimanovic received child benefit for her two school-age children. However, the Neukölln job centre in

Berlin, which has been responsible for these social benefits, decided that the payment of the basic provision for long-term unemployed should be stopped from May 2012. The reason for this was the change in the application of the European Convention on Social and Medical Assistance decided by the Federal Government in December 2011. As a result, "foreign nationals whose right of residence arises solely out of the search for employment, and their family members" could be excluded from receiving the basic provision for long-term unemployed (C-67/14, 15). The Alimanovic family lodged an appeal against this with the Berlin Social Court. The court overturned the Job Centre's decision to stop the payments, whereupon the job centre in turn lodged an appeal with the Federal Social Court. The latter submitted a request for a preliminary ruling to the ECJ, asking, among other things, whether Nazifa Alimanovic and her daughter Sonita fell within the scope of the European anti-discrimination principle, even though they had only been employed or self-employed in short-term jobs or in employment promotion measures for less than a year since their arrival in Berlin in 2010 and not at all since May 2011.

Like Elisabeta and Florin Dano, Nazifa Alimanovic and her children were excluded from the scope of the European anti-discrimination principle. Moreover, the Alimanovic judgment abolished the so-called individual assessment for jobseekers without proof of a one-year period of employment and therefore without chances of integration into the labour market. In this regard, the ruling stated that it is not mandatory for EU citizens such as Elisabeta Dano and Nazifa Alimanovic that social rights be "redeployed at the level of concrete situations" (Castel 2012, 117).

4. Renegotiating Social Citizenship on the ECJ Arena

The three judgments reveal the dynamic and shifting configuration that has become characteristic of mobile workers' social citizenship between 1998 and 2015. The players in the ECJ arena redefined worker status, the principle of non-discrimination, and access to social rights in an ongoing process.

4.1 Determining Worker Status

As the ECJ stated in its Martínez Sala judgment in 1998, the citizen of an EU member state acquires worker status not only through actual employment in the present, but also through his or her employee contributions to social security schemes in the past. By referring to the Regulation of the Council of 14 June 1971 on the coordination of social security schemes to employed persons and their families moving within the Community (1408/71/EEC, today 883/2004/EC), the judges, the advocate general, and the Commission emphasised that insurance cover must have applied "for one or more of the

contingencies covered by the branches of a social security scheme" (art. 1, 1408/71/EEC). María Martínez Sala must then be considered a worker "within in the meaning of the social security," "*whether or not the person concerned has entered into an employment relationship*" (Martínez Sala, Commission, point 25, emphasis in original, own translation). Indeed, she was compulsorily insured for health during her parental leave after the birth of her first child. The Commission noted in addition that María Martínez Sala is the daughter of former guestworkers who exercise their right to remain "in the State of employment" (Martínez Sala, Commission, point 62). With this comment, it was first and foremost providing an argument for the legitimacy of Martinez Sala's residence in Germany, but also hinting at the fact that the worker status can emerge from a specific migration and family trajectory. Overall, de-commodified elements acquired through commodified work in the past are referred to in the judges', advocate general's, and the Commission's texts for determining worker status. The interweaving of de-commodified and commodified elements of determination was necessary, according to the Spanish government's observation, in order "to prevent member states from undermining the principle of freedom of movement [...] by imposing greater or lesser restrictions on it in their national legislation" (Martínez Sala, ES, 6-7, own translation). The Spanish government considered the European law to be protection for mobile workers against negative effects of labour mobility due to national governance and interests. Both the Commission's comment on María Martínez Sala's "guest worker origin" and the Spanish concern about the protection of migrant workers under European law sound like an echo of the ECJ's early case law in the 1970s (see part 2).

The German government, in contrast, did not acknowledge worker status for María Martínez Sala because she was not employed or self-employed just before the birth of her first child and while she was raising the child. According to this position, occasional employment in the past did not give her sufficient cover through social security schemes and did not offer grounds for her to enjoy the de-commodified dimension of worker status. Furthermore, the German government considered it necessary for a person to be covered by all branches of the social security system. María Martínez Sala's obligatory health insurance during her parental leave for her first child, in effect a period of subsistence and care labour, was not enough to secure recognition of her worker status, according to the German government (Martínez Sala, DE, points 6, 7). Although the German position vis-à-vis the welfare dimension of worker status was not upheld in the Martínez Sala case, it already heralded future tensions about precarious workers' social protection, and their right to exercise freedom of movement.

In the Dano and Alimanovic cases decided 14 years later, the actors of the labour mobility regime in the ECJ's negotiation arena determined status in relation to the search for employment and the prospects of finding work on

the labour market. "For the United Kingdom," for example, Elisabeta Dano was not a worker, "since the applicant (1) is not actively seeking employment and, even if she were, would have no reasonable chance of finding employment" (Dano, GB, point 11, own translation). An insufficient number of days employed and lack of employment continuity in one and the same member state were the criteria by which the judges, the advocate general, the Commission, and the government representatives writing observations decided on an EU citizen's prospects on the labour market. When an EU citizen proved her or his employability by working continuously for at least one out of five years, she or he can acquire worker status providing full welfare access (Art. 7 2004/38/EC). If not, she or he is denied access to social assistance benefits and the application of the non-discrimination principle. This worker status and its consequences for access to social rights are virtually identical to those defined for "third-country nationals who are long-term residents," in effect for postcolonial migrant workers and Germany's "guestworkers" (Directive 2003/109/EC; Bendel 2010).

Through the Dano and Alimanovic cases, for EU citizens employability, jobseeking, and last but not least actual employment have become the pre-conditions of exercising their right as EU citizens to move within the EU and to reside in any member state. Yet, the advocate general in the Martínez Sala case called this right "the kernel" of the EU-citizenship (Martínez Sala, GA, point 18). The negotiations on the Dano and Alimanovic cases at the ECJ have washed out this kernel. This right no longer appeared "as the first of the rights ascribed to citizenship of the Union" (Martínez Sala, GA, point 18). The strongest proponents of this erosion were the German, British, and Irish governments, which differentiated between various groups of EU citizens. The wording of their observations relativized jobseekers' EU citizen status or rendered it invisible. For example, in the German and Irish observations, a person who does not fulfil the pre-conditions set out by directive 2004/38/EC became an "economically inactive EU citizen of foreign nationality" (Dano, DE 80, own translation). The British government described jobseekers like Nazifa Alimanovic and her daughter Sonita as "migrants from other states of the Union" (Dano, GB 57, own translation). Characterisations such as those cited above give rise to the idea that EU citizens who are unable to sell their labour in accordance with current market standards lose their rights of mobility and residence as EU citizens.

It is furthermore significant that in the context of assessing Elisabeta Dano's and Nazifa Alimanovic's non-employability, the European single market disintegrates into national labour market sectors. For the German government, the claimants' employability is exclusively about the "German labour market" (Alimanovic, DE, points 3 and 121, own translation). The Austrian government had already stated in the Dano case that there is "no actual connection between the applicant and the German labour market" (Dano, Austria, point

9, own translation). This disintegration of the European single market into national labour markets demonstrated the persistent importance of the relationships between the member states' welfare institutions and labour market policies on the one hand and the definition of the "citizen-worker" (Bänziger 2022, 133; see also part 3) on the other hand. The judges, advocates general, and the Commission in the Dano and Alimanovic cases as well as the Swedish government in the Alimanovic case avoided differentiations both between job-seeking EU citizens with and without employability and between national labour markets within the single market. However, they built their legal positions on the concept of "citizen-workers," as did the judges, the advocate general, the Commission, and the Spanish government in the Martínez Sala case. In this respect, these actors shared a persistent and unanimous determination of worker status. The differences lie in the degree of importance attached to the de-commodified elements of worker status and in the scope of the principle of non-discrimination in determining individual entitlements of citizen-workers.

4.2 Deciding on the Scope of the Principle of Non-Discrimination

Going back to the German observation in the Alimanovic case, the advocate general described Nazifa and Sonita Alimanovic's controversial connections with the labour market as links "with the relevant geographic labour market" (Alimanovic, GA 109), and not with the German or national labour market. At the same time, he added, family matters, for example children's schooling, constitute "a lasting connection between the person concerned and the new host Member State" (Alimanovic GA, point 109). "The demonstration of a *real link* with the State" (Alimanovic GA, point 107, emphasis in original) opens up the realm of the principle of non-discrimination, as do the connections with the European labour market. No other actor in the Dano and Alimanovic cases – neither the ECJ judges nor the governments nor the Commission – pointed to the social relations that a mobile worker and her or his family are obliged to establish to secure housing and schooling, manage family life, organize administrative and welfare obligations, etc. (although the Commission recognised the applicants' connections with the labour market in the two cases in question). Their arguments remained focused on labour market integration and the resulting social protection through insurance rights. From their point of view, European secondary law on the exercise of freedom of movement determines the scope of non-discrimination and not the social relations mobile citizens struggle to establish and maintain through housing, schooling, administrative registration, etc. The advocate general, however, made a strong case for thinking the other way round: He took the specific situation of EU citizens in the member state as his starting point and considered the principle of non-discrimination as well as the application of

secondary law through the mobile workers and her or his family members' social relations. He used both non-discrimination and secondary law as levers for organizing equal treatment. This kind of thinking described the problems outlined in the preliminary ruling in the Alimanovic case as "sensitive in human and legal terms" (Alimanovic, GA, point 2).

This position as well as the position of the judges, the advocate general, the Commission, and the Spanish government in the Martínez Sala case set the conditions for the approach that the advocate general in the Alimanovic case, Melchior Wathelet,[6] brought into play. These positions had already underlined the general nature of the equal treatment requirement and based mobility and residence on the citizen's choice. The equal treatment requirement and respect for citizens' choice prohibit "both overt and covert discrimination in the field of social benefits" (Martínez Sala, Commission, point 45) as well as with respect to requiring a residence permit. "The conclusion is self-evident," wrote the advocate general for the Martínez Sala case, "the host State cannot discriminate between a Union citizen who is one of its own nationals and a Union citizen who is a national of another member state whom it allows to reside in its own territory" (Martínez Sala, GA, point 22). Here, residence and not worker status was the basis for the scope of the non-discrimination principle.

The German government had already argued against this position in the Martínez Sala case. By pointing to the wording of article 7 of the free movement regulation 1612/68/EEC (today 2004/38/EC), which in its opinion demonstrated that free movement was restricted to work issues (Martínez Sala, DE, point 2), the German government asserted the economic rationale of the right "to *reside* in every Member State" (Martínez Sala, GA, point 18, emphasis in original) (see Comte 2025, in this special issue). The principle of non-discrimination served, in the view of the German government, the enforcement of commodified rationality within the EU. Therefore, it was not consistent with any de-commodified approach to European governance of labour mobility. During the period between the Martínez Sala judgment in 1998 and the successive judgments in the Dano case in 2014 and the Alimanovic case in 2015, the German government had several occasions to further develop this position (Pataut 2018), to seek inspiration in the observations of other member states, and, last but not least, to put the finishing touches on its own interpretation of the relationship between the principal of non-discrimination and the coordination of social security schemes.[7]

Basically, the German position has remained fairly consistent throughout the period between 1998 and 2015 scrutinized here. The German government essentially did not change its arguments with respect to the scope of non-

[6] Wathelet was one of the judges in the Martínez Sala case.

[7] In the Martínez Sala case, the German written observations consist of 22 points on 9 pages, in the Dano case of 151 points on 41 pages, and in the Alimanovic case of 133 points on 42 pages.

discrimination or the economic rationale of the non-discrimination principle. Nevertheless, it was much less isolated and defensive in negotiations on the Dano and Alimanovic cases than with respect to the Martínez Sala case. Indeed, its position was supported in the Dano and Alimanovic cases, by the Irish, British, Austrian, and Italian governments. In view of the timeline described in the second part of this article, the impression emerges that the German government endeavoured over the course of 17 years to promote and narrow the commodified interpretation of the scope of the non-discrimination principle. It participated very actively in shifting the legal discussion about the equal treatment requirement from treaty-based normative reasoning to a technical argumentation based on European secondary law. One result of these efforts has been that the normative content of the requirement has faded on the backdrop of a compartmentalised debate on the areas in which the diverse directives and regulations can be applied. For example, one of the main arguments of the German government in the Alimanovic case was addressed what were termed the "assessment contradictions" (*Wertungswiderspruch*) with respect to social rights (Alimanovic, DE, point 45) in the directive on citizens' freedom of movement (2004/38/EC) and the regulation on the coordination of social security systems (883/2004/EC).

With the Alimanovic judgment, the German government was able to assert its position that European citizens' situation did not have to be examined in each individual case to determine whether policies on access to social benefits were discriminatory. Several observing governments were also quite satisfied with this decision, especially Austria, which had already tried to abandon the principle of individual examination in 2013 in the C-140/12 Brey case. The individual examination requirement prohibits litigation on the basis of pre-established categories and calls for case-by-case decisions that weigh the "burden" of financing social benefits for one citizen and her or his family, on the one hand, and the EU citizen's "*real link* with the State" (Alimanovic GA, 107, emphasis in original), on the other. The examination requirement represents the "ordering mechanism" (Lafore 2014) that the European principle of non-discrimination calls for (see parts 1 and 3). In contrast to the advocate general's opinion and the Commission's and the Swedish government's observations,[8] the judges agreed that individual examination requirement could be suspended in the case of job-seeking Union citizens without any prospects of integration into the labour market. The Alimanovic judgment legitimated categorization of EU citizens into those to whom the non-discrimination principle applies (because they are considered employable) and those to whom it does not apply (because they are seen as unemployable) with respect to

[8] The Swedish government considered the individual examination of the purpose of the social benefit in question, not the individual examination of the citizen's situation and her or his social relations in the member state, as the general advocate did by pointing to Nazifa Alimanovic's "real link" with Germany through the schooling of her children.

access to non-contributary, tax-financed social assistance. The distinction between the two categories has been left to the discretion of the national administrations, due to the welfare competence of the member states. The partial undoing of the obligation to consider individual circumstances has prevented the redeployment of "social rights at the level of concrete situations" (Castel 2012, 117). This shift was then in part responsible for the reproduction of systemic discrimination of (mostly female) labourers without worker status and for inadequate protection against discrimination for those relegated to temporary and precarious jobs.

4.3 Assigning Social Entitlements

The three cases examined here reveal a dispute over the conditions under which social assistance rights should or should not be assigned to single mothers without employment and without insurance coverage. All ECJ actors of the European regime of labour mobility asked whether and how social entitlements through contributions made in the past could (or could not) be transferred to entitlements to social assistance benefits. However, they took different perspectives in answering the question, as will be further outlined below. The problem at stake was to establish relations between de-territorialised social rights (Fertikh 2025, in this special issue), which are to be coordinated between the member states according to regulation 883/2004/EC, and territorialised social rights that emanate from the member states' sovereignty as well national finances, their social policies, and, last but not least, their general understanding of welfare policies. By quoting the judgment C-140/12 Brey and referring to regulation 883/2004/EC on the coordination of the social security systems, the advocate general underlined in 2014 that the secondary law "is not intended to lay down the conditions creating the right [to special non-contributory cash benefits, NT]. It is [on the contrary] for the legislation of each Member State to lay down those conditions" (Dano, GA, point 145).

However, the judges and the advocate general, together with the Commission and the Spanish government, took different positions in the Martínez Sala case. On the basis of the European Union Treaty of Maastricht and its constitutional provisions for Union citizenship and in perceiving the case through the lens of de-commodification, they considered María Martínez Sala to be a European citizen-worker. Her de-territorialised right of residence as a EU citizen was the condition that created, by virtue of non-discrimination, the entitlement to territorialised social assistance benefits. The ECJ then asked the German government to interpret and adopt its legislation to comply with this de-territorialised view. It thus constrained the member state's terms for providing access to territorialised tax financed social assistance in favour of upholding the de-territorialised citizenship right of residence. The German government, on the other hand, acting on the basis of a lens of

commodification, categorised María Martínez Sala as a poor person whose residence permit depended on the German state's goodwill in respecting the bilateral agreement between the former Federal Republic of Germany and former Francoist Spain within the European Convention on Social and Medical Assistance of 1953 (and did not refer to a de-territorialised EU-citizen right of residence).

The German position showed that the system of tax-financed social assistance benefits had not been completely excluded from international agreements on labour migration (Canepa 2023; Roman 2009). Of course, migrant workers' access to social assistance has been a longstanding, conflict-ridden issue in governing labour mobility, yet it had already been considered, by International Organizations, part of mobile workers' social security before the European integration project began to take shape (Althammer 2020; Kott and Lengwiler 2017; Maul 2019; Rosental 2011). In this regard, the Martínez Sala judgment built on norms of international labour law and opened up a legal venue within EU policy making that accepted de-territorialised approaches to territorialised social entitlements. This EU legal venue had been amplified with the judgments C-184/99 Gryzelcyk, which force Belgium to offer access to territorialised social assistance to a destitute French student to and C-456/02 Trojani, which ruled that Belgium had to provide access to territorialised social assistance for a French citizen who was formerly homeless and living in a Brussels shelter (Tietze 2022b).

With the Dano and Alimanovic judgments, this EU legal venue began to vanish. The arguments exchanged on the occasion of these two cases rejected de-territorialised and territorialised entitlements. Two different perspectives were evident here: the first focused on the European citizens' individual situation and the "protection offered by EU law to citizens, as regards their financial situation and their dignity" (Alimanovic, GA 2), while the second centred on the "burden" that the member states bear by financing social security for "economically inactive Union citizens" (Dano, IE, point 27, own translation). In using the "burden" argument, the players, in particular the German but also the Irish, British, Austrian, and Italian governments, were not inventing a new concept. They referred to the freedom of movement directive 2004/38/EC (more precisely, to article 7 [1][b]). The preliminary remarks of the directive state: "Persons exercising their right of residence should not, however, become *an unreasonable burden on the social assistance system of the host Member State* during an initial period of residence." (2004/38, preliminary remark (10), own emphasis). Yet, the strong emphasis that the players placed on the "unreasonable burden" not only ran counter to the directive's goal, which is to regulate how citizens' right to free movement is exercised. It aimed above all to politicise financing of social security benefits for EU-citizens categorized as unemployable. "Preventing the excessive utilisation of social welfare benefits by migrant EU citizens is therefore also necessary *for*

overriding political and social reasons" (Dano, DE 134, own emphasis and translation).

The "unreasonable burden" argument as applied to "economically inactive EU citizens" was intertwined with the understanding that entitlements to social benefits were rewards for merits. The wording used by the German, Irish, and British governments were clearest in this regard. The Irish government stated that it was

> strongly of the view that [...] the provision of a *Grundsicherung* [safety net basic income representing a special non-contributory benefit, NT] [...] constitutes an unreasonable burden on the social assistance system of any Member State *for the sole reason that the applicant is not seeking to contribute to the host Member State, but rather intends to live at the expense of that State in the long term* (Dano, IE, point 12, emphasis in the original text, own translation).

"Inactive immigrants" (*inaktive Zuwanderer*) (Alimanovic, DE, point 62) weaken the "financial solidarity of nationals of a host Member State with other EU citizens who contribute nothing other than their social benefits" (Dano, IE, point 12). These immigrants did not deserve social entitlements or the right to free movement and residence in Germany. In this respect, the German government stated that "granting non-contributory subsistence benefits to economically inactive EU citizens beyond acute cases is limited to providing the necessary means for them to return to their home country" (Dano, DE, point 136, own translation). The assessment that some did not deserve social entitlements justified the ranking of European citizen-workers with full access to social and residence rights above European labourers with restricted access to social and residence rights. Ultimately, this view led to concept of social welfare that sorted citizens into two classes: a higher ranked class with de-territorialised social entitlements that are transferable to territorialised social assistance (see Beronja 2025, in this special issue), on the one hand, and a lower one without de-territorialised entitlements and with no access at all to social rights.

In answering the question of whether and how social entitlements through contributions to social security systems made in the past could be transferred to entitlements to social assistance benefits, in the Alimanovic case the advocate general adopted a perspective that differed from the member states' concept of a "burden," which had prevailed since the Dano case. The starting point of his argument was the Alimanovic family's specific situation and the "protection offered by EU law to citizens, as regards their financial situation and their dignity" (Alimanovic, GA, point 2). The fundamental rights approach to social entitlements seemed to emerge in the advocate general's position because he referred to the fact that human dignity is protected by the Charter of Fundamental Rights (Herrera 2009). It was definitely present in the Dano and Alimanovic cases, thanks first of all to the preliminary questions of

the national courts that referred the cases. But both the ECJ and the advocate general rejected the fundamental rights perspective on social entitlements. They argued that the ECJ's sole area of competence was to judge whether fundamental rights were respected in implementing European treaties and law in the member states but not whether such rights were protected in applying national legislation on social assistance. The observing governments, in particular the German one, completely rejected the fundamental rights approach in favour of their understanding of social entitlements based on deservingness. The German government stated:

> The Charter of Fundamental Rights does not give rise to *any entitlement of an economically inactive Union citizen to receive social assistance benefits* from a host Member State which would enable him or her to reside there permanently. (Dano, DE, point 137, own translation and emphasis)

Rather than heralding a new understanding of social security questions, the ray of hope that emanated from the fundamental rights approach to social rights in the Dano and Alimanovic cases resulted from Robert Castel's concept of social citizenship, that is, social citizenship through participation, through work, to the tools for managing social risks. No matter how different their positions were, all the actors of the European government of labour mobility at the ECJ had in mind the citizen-worker as the bearer of social rights, and not the "members of the human family" (Universal Declaration of Human Rights). With regard to the citizen-worker, the wording of the advocate general's argument quoted above referred to the attempt to redeploy "social rights at the level of concrete situations" and establish the necessary conditions for everybody "to participate fully in social life, in other words, to be able to behave like citizens" (Castel 2012, 117).

5. Concluding Remarks

The ECJ jurisprudence period examined here (1998–2015) and, in particular, the Martínez Sala (1998), Dano (2014), and Alimanovic (2014) cases have shown how the actors at the European Union's court of justice asserted a social citizenship approach to labour mobility and later dismantled it. At first, they built on the de-territorialised and constitutional European law of Union citizenship in order to focus on the migrant worker's specific, individual situation. Later the focus shifted to a technical, secondary law argumentation that made the migrant worker's specific, individual situation invisible and pushed member states' national finances to the fore. The first phase of this process was based on a de-commodified determination of worker status that included not only employment but also subsistence and care labour in the scope of the non-discrimination principle and thus facilitated transferral of the de-territorialised perspective on social rights to territorialised social

assistance benefits. The second part of this process focused on employment and employability and advanced the market-based rationale of the non-discrimination principle. Migrant workers' social security became an "unreasonable burden" for member states as they competed against each other in the European single market and the global market.

The overall process revealed that intra-European migrant workers' social citizenship was considered in a fragmented and at the same time flexible manner that could be adjusted to fit prevailing labour market policies and economic objectives. EU citizens with non-linear migration trajectories and precarious employment biographies, in particular female single-parents, seemed to be the perfect target groups for governments aiming to compartmentalise the elements of social citizenship and adjust them to serve labour market policies and economic competition. In this regard, the EU understanding of social citizenship recalls how North African workers were treated in France in the late 1950s and 1960s (Mulonnière and Ricciardi 2025, in this special issue). Moreover, the German government argued in the context of the Dano case that "the liabilities of social expenditure" for EU citizens leads to negative public perceptions that are "detrimental to [European, NT] integration to a considerable extent" (Dano, DE, point 134, own translation). In doing so it used reasoning that the West German government had already advanced in the 1980s in discussions about social security benefits for so-called guest workers (non-EC labour migrants). As Lauren Stokes (2022) noted, the West German government conjured up memories of the Nazi past to produce "fears for the future" and paint a picture of impending political violence due to "minority problems" in order to justify "more restrictive migration policies" and, at the same time, implement neoliberal social policies (Stokes 2022, 4). "Finally, the regulation of guest workers and family migrants contributed to the development of 'market-conforming' and neoliberal governance within the West German state" (Stokes 2022, 4).

The German government indeed played a central role in the ECJ negotiating arena in promoting the revival of post-colonial and "guest-worker" patterns in European regime of labour mobility. As explained in more detail in the fourth section of this article, independent of changing administrations on the national level, Germany worked persistently over the course of several preliminary ECJ deliberations and rulings to prevent a de-territorialised understanding of social citizenship and block the transfer of de-territorialised perspectives to territorialised social assistance benefits. To do so, it built on its traditional concept of migrant workers, i.e., on the inclusion of foreign workers in welfare systems as needed and for a limited period of time. However, the German position and its market-based argumentation on labour mobility was only able to prevail in the ECJ negotiation arena because other member states had been pulling in the same direction since the 2000s and also

perceived their social policy instruments as tools to be deployed in inner-EU competition.

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The Journalistic Coverage of Posted Workers. From Diplomatic Affairs to Daily Local News

Pierre-Edouard Weill & Pierre-Guillaume Prigent *

Abstract: *»Die journalistische Berichterstattung über entsandte Arbeitnehmer. Von diplomatischen Angelegenheiten bis zu täglichen Lokalnachrichten«.* The posting of workers is a labour mobility practice at the heart of public debates on the Europeanisation of labour markets and social security systems. Our paper questions the media representation of these issues, focusing on the transformations of posted workers' journalistic coverage in France since the early 1990s. The mix-method research design combines qualitative and quantitative data analysis in order to understand how and why the media framing of posted workers fluctuates between international diplomacy, national politics, and local economic issues. In addition to examining the characteristics of the press outlet, we also consider the politicisation cycles of this multi-level government issue. We finally discuss these findings implications for future research on journalistic coverage of EU construction and policy feedback resulting from variations in media framing, or for the analysis of large press corpus.

Keywords: Posted workers, European Union, media framing, politicization, press corpus.

1. Introduction

Some social problems have a surprising kaleidoscopic effect when viewed through the media lens. What do the "hot topics" of the new French President Macron's diplomatic tour to the Central and Eastern Europe Countries (CEEC) have in common with the priorities in the fight against social fraud or the Romanian community's growing influence on the local authorities of a small Breton town? Journalistic coverage of these seemingly distant issues often focuses on the same group of individuals, regardless of the content, the newspaper in which they appear, or the date of publication: posted workers. These

* Pierre-Edouard Weill, Université de Bretagne Occidentale, LabLEX (EA 7480), Faculté de Droit, Economie Gestion & AES, 12 rue Kergoat, 29200 Brest, France; pierreedouard.weill@univ-brest.fr. ORCID iD: 0000-0002-3635-9096.
Pierre-Guillaume Prigent, Université de Bretagne Occidentale, Labers (EA 3149), Faculté des Lettres et Sciences Humaines, 20 rue Duquesne, 29200 Brest, France; pierre-guillaume.prigent@univ-brest.fr. ORCID iD: 0000-0003-1024-8264.

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are employees who are sent by their company to another member state of the European Union (EU) under a contract for the provision of services, intra-group posting, or temporary work. This article analyses the media representation of this posting of workers as a labour mobility practice at the centre of political debates on social Europe since the mid-2000s, particularly with regard to the European harmonisation of labour and social protection rules (Crespy 2010).

The status of posted workers is at the crossroads of two fundamental principles of the EU: the freedom to provide services as a pillar of the single market and the protection of workers' rights. Indeed, Western European companies are making increasing use of this status, especially since the EU's eastward enlargement in 2004 and 2007. In 2019, the number of postings within the EU peaked at more than 3.2 million, involving almost 2 million workers, compared to less than 500,000 in 2004. Germany, France, and Belgium are the member states that attract the most posted workers, often from Eastern and Southern EU countries, especially Poland, Portugal, and Slovenia (De Wispelaere and De Smedt 2023). Although the pandemic slightly slowed this boom in the number of posted workers, hundreds of thousands of them continued to travel and work in France and elsewhere in Europe, even during lockdown periods.

The phenomenon of posted workers is becoming an increasingly prominent focus of multidisciplinary research. The changes in its regulation since the 1996 European Directive, which stipulated that such workers should benefit from a "hard core" of labour law in the host country, are examined by legal scholars. They provide a detailed account of how this directive was completed in May 2014 with the objective of improving monitoring and cooperation between national administrations. This was prior to the in-depth reform of June 2018, which saw a reduction in the maximum duration of posting and an extension of the hard core to encompass workers' remuneration (Rocca 2020). The evolution of European case law was also examined, as well as the various ways in which it is politicised at the national level (Martinsen and Blauberger 2021). Furthermore, the majority of sociological studies within the field of industrial relations examine the responses of companies, trade union organisations, and national administrations to these reforms. These studies demonstrate that posted workers are employed not only to address labour or skill shortages in sectors such as construction, industry, transport, and agriculture. Additionally, companies utilising posted workers benefit from the discrepancies in social security contributions between importing and exporting countries. The increased use of posting also contributes to the segregation and stratification of national labour markets (Arnholtz and Lillie 2023). Western European employers are thus exposed to allegations of social dumping, which is encouraged by the governments of labour-importing countries. These governments are less focused on the respect of posted

workers' rights than on national firms' competitiveness. This situation has attracted considerable criticism from trade union representatives at the European level (Bethoux et al. 2018; Riesco-Sanz et al. 2020; Seeliger and Wagner 2020). The status of posted workers raises concerns regarding the protection of national labour rights and social welfare, particularly if it is not linked to a significant level of evasion or exploitation. In addition to social dumping, representatives of importing countries have also highlighted legal ambiguities that facilitate fraud at both the national (Michon and Weill 2021) and the European level (Michon and Weill 2023). Scholars have also illuminated the non-respect of posted workers' rights in the context of bogus subcontracting (Novitz and Andrijasevic 2020) or irregular employment by transnational temping agencies (Décosse and Desalvo 2017). Furthermore, they have shed light on the limitations of national policies to combat these issues (Weill 2022).

This article employs a socio-historical approach to examine the evolving politicisation of labour conflicts in Europe (Noiriel 2009). The present study focuses on the framing of posted workers in the French press, examining the content of media reports and the underlying logic of their production. By analysing the increased visibility of posted workers and the ways in which their representation is evolving and diversifying, our paper makes a twofold contribution to the EU's media coverage in regard to both immigration and the construction of the single market.

Firstly, it is mainly journalistic representations of labour migration of EU nationals that we seek to explore. In contrast, research is more likely to focus on the asylum seekers, even before the 2015 refugee crisis (Krzyżanowski et al. 2018). These media content analyses generally show that coverage of immigration is often negative and conflict-centred. Scholars also argue that frequent exposure to such media messages leads to negative attitudes towards migration, activating stereotypical cognitions of migrant groups (Pérez 2017). This is more specifically demonstrated by the few studies that have been carried out on the journalistic representations of those who come from former "Eastern European" countries, following their accession to the EU (Light and Young 2009). However, our study extends the analysis to all intra-European migrants, regardless of their geographical area of origin.

Secondly, our approach to the journalistic treatment of intra-European labour migration and related social protection issues aims at renewing more generally the analysis of the EU construction media coverage. Indeed, existing political science research mainly focuses on the media's role in the EU's "democratic deficit," often measured by its presence as an electoral topic in national elections (Hoeglinger 2016). Nevertheless, the media visibility of the EU strongly correlates with the emergence of specifically European electoral events (Schuck et al. 2011), such as the national referendums on the Constitutional Treaty in France, Netherlands, or Spain in 2005. These studies

contribute to a deeper comprehension of the processes that shape EU politicisation and euroscepticism in the public sphere. They examine the relationship between the media and their official sources in the agenda-building process, offering insights into the underlying dynamics that drive these phenomena. However, insufficient consideration has been given to the manner in which certain European policy matters, particularly those pertaining to labour migration, are not only routinised but also locally embedded, even in their media representations.

In light of these observations, this paper presents three primary hypotheses regarding the nature of media interest and framing logic surrounding posted workers in the French press. Firstly, we aim at identifying the various periods during which the visibility of posted workers and their media coverage undergoes change. Secondly, we seek to ascertain the extent to which the (lack of) politicisation of the newspapers in question influences the content that they publish. Thirdly, we consider the impact of the international, national, or regional status of the journalistic titles. Prior to presenting our findings, we will provide a description of the data and methodology upon which they are based. Subsequently, we present the chronological sequences of media exposure for posted workers, in relation to the European institutional agenda and to trends in the use of these workers by French companies. Then, we establish and illustrate a typology of their media framing, relating it to the publications' principal characteristics. In conclusion, we present the implications of our study for future research on the analysis of media representations of immigration regulation and European integration.

2. Data and Methodology

The dataset for analysis was compiled from the French Europresse website. Relevant French-language articles were downloaded via keywords searches related to the posting of workers, using a combination of the following terms in the singular and plural[1]: *détachement* (posting), *détaché* (posted), *salarié* (employee), *travail* (work), and *travailleur* (worker). All articles since the first of January 1991 have been included. The articles exported from Europresse were converted into a dataset using an R script (Roquebert 2018), with changes made to the structuring of the articles based on the website's HTML markup. Web scraping of the exported files retrieved not only the content of each article, but also its length, associated media title, and publication date, which were stored in a database. Articles with fewer than 500 characters were excluded from the analysis, and duplicates were removed by applying

[1] All terms used in the lexicometric analysis are translated into English, with the exception of those that are proper nouns or anglicisms.

dissimilarity matrices. In addition, articles that were clearly off-topic based on their content were manually identified and excluded. The database thus contains 7,346 French press articles (1991–2021). The media title was used to determine whether the publication was regional (e.g., *Ouest-France*, *Le Parisien*, *Le Dauphiné Libéré*), national (e.g., *Le Monde*, *Le Figaro*, *Libération*), or international (e.g., *Courrier International*, *Le Monde diplomatique*), and whether it specialised in economics (e.g., *La Tribune*, *Les Échos*). We also considered the political orientation (left or right) of certain newspapers, as French journalism has historically been characterised by a more literary and politicised style than Anglo-American journalism (Neveu 2019, 16). In addition, we used the publication date to group each article according to our hypotheses further developed on the European political agenda. Finally, a variable was constructed to scale the presence of the "detach" (post) lemma. The frequency of this lemma, in relation to the number of words, was calculated for each article. This ratio was discretized to create three levels of intensity: low, medium, and high. This allows for grading the posting of workers' centrality in the article, whether it was the main topic or just one of several illustrations for another theme.

The corpus was imported into Iramuteq software for textual analysis with the objective of identifying and interpreting various lexical worlds (Reinert 1993) as media framing types. The Iramuteq software was used to process the corpus, with stop-words (i.e., very common words such as pronouns, which were deemed insignificant for the purposes of this analysis) relegated to additional forms prior to lemmatisation of the active words. Lemmatisation is a technique that normalises inflected word forms in a document by identifying their basic form, or lemma. The process reduces the multitude of forms, such as flexions or conjugations, to a single, canonical form, thereby highlighting the use of words in all variants, including masculine, feminine, plural, and verb tense. As with any reduction, this approach entails the loss of some information, but it facilitates the extraction of significant statistics (Emprin 2018). In this manner, we considered 4,445,293 instances of words occurring within the corpus. After the exclusion of stop-words and hapax, a total of 20,061 lemmas were finally identified among 72,750 active forms, which were then subjected to further analysis to highlight any repetitions and combinations.

An overview of the most frequent lemmas immediately shows how they correspond to the main dimensions of the different framings used by the press articles studied. In addition to the territorial dimension ("Europe," "France"), the most frequent terms refer to legal ("Directive," "droit" [law]), economic ("travail" [work], "entreprise" [company], "service") or political ("Etat" [state], "president") aspects of the posting of workers. We will then examine how these different dimensions are articulated in this representation of the phenomenon. First, we will review the chronological development of the media

visibility of posted workers and its political logics before systematically highlighting the diversity of media framings through a typology.

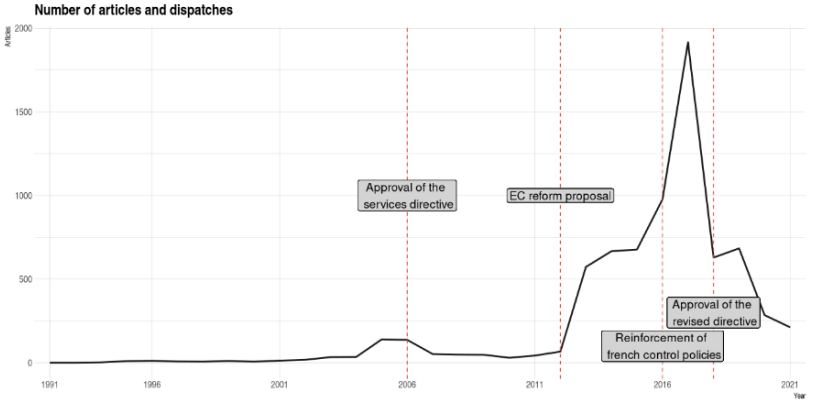
Table 1 Thirty Most Frequent Terms in Articles Mentioning Posting Workers

travail (work)	31,774	euro	6,897	public	4,897
Europe	31,532	emploi (employment)	6,631	Mélenchon	4,833
France	24,71	Politique (politics)	6,447	Allemagne (Germany)	4,496
détaché (posted)	15,813	président (president)	6,39	service	4,358
social	13,164	économie (economy)	5,807	gouvernement (government)	4,225
pays (country)	12,961	directive	5,681	projet (project)	4,129
entreprise (company)	12,776	ministre (minister)	5,616	marché (market)	4,093
salarié (employee)	11,887	droit (law)	5548	Étranger (foreigner)	4,083
Macron	8,728	Union	5413	loi (act)	4,06
Etat (state)	8,354	national	4935	commission	3,932

3. Chrono-Logics of a Media Exposure

Since the early 2000s, journalistic coverage of posted workers in the French press has developed both in terms of intensity and content. The number of articles published correlates closely with the number of posted workers in France as recorded by the public authorities. The increasing use of posted workers by French companies can be monitored over time by counting the number of A1 forms received by the French authorities justifying the affiliation of workers to their own national social security system. The legal obligation for service providers and temporary employment agencies to send these forms predates the introduction of national e-declaration systems. It also allows for Europe-wide comparisons of the impact of posting on national labour markets. Since the early 2010s, France has been a major destination for posted workers, whether from Germany or from Southern or Eastern EU countries. The number of postings increased from 24,466 in 2005 to 144,411 in 2011, before rising sharply at the end of the 2010s to more than 700,000 in 2019, and then declining due to the impact of the health crisis. However, these fluctuations must also be seen in the light of the European institutional agenda on employment and social protection. In the light of this agenda, which is strongly determined by the political impetus of the governments of the member states, we identify the chronology of shifts in emphasis across different periods, during which the content of posted workers' representation varies significantly.

Figure 1 Articles Mentioning Posting Workers and Political Agenda



From the early 1990s to the end of 2004, no more than 35 articles per year mentioned posted workers. Moreover, they are rarely the focus of the articles in this first period. Instead, they illustrate one issue among others in the construction of the common market and its aporias. In fact, the percentage of articles with intensive use of the lemma "detach" (post) is remarkably low (14.6% compared to 25.1% in the entire corpus). In other words, posted workers were as underrepresented in the French press as they were discreet on the national labour market. The publications listed – mainly in the major national general interest dailies or in titles specialising in international affairs – dealt with regulatory measures at European level and the diplomatic stakes involved. One example is the Rush Portuguesa decision of the European Court of Justice of 27 March 1990, aimed at combating abuses of the freedom to provide services. This ruling allows the authorities of host countries to impose their legislation or national collective agreements, but also to verify the existence of a real activity in the country of origin. Some articles describe the discussions that began in 1991 within the European Commission to draft a directive. It was finally adopted by the European Council and Parliament in 1996, specifying the hard core of host-country legislation applicable to employees of service-providing companies. The term "service" is the one most associated with this long initial period. The second most characteristic term is "Constitution." Indeed, the public debate crystallised around the Services Directive during the French referendum campaign on the European Constitutional Treaty. The latter was not ratified in France, as in other countries where a referendum is organised, despite the wishes of the national governments. Incidentally, 2005 saw a significant increase in the number of articles mentioning posted workers (140, four times more than the previous year). The "Polish plumber" entered the referendum debate at a late stage. Although the term was coined in December 2004 by Philippe Val, the editor-in-chief of

the satirical weekly *Charlie Hebdo*, it was Philippe de Villiers, a far-right political leader, who popularised this metonymy for posted workers in an interview with *Le Figaro* in March 2005:

> This is a very serious matter, because the Bolkestein Directive allows a Polish plumber or an Estonian architect to offer their services in France, with the same wages and social protection rules as in their country of origin. Of the 11 million people working in the services sector, one million jobs are threatened by this Directive. It is a dismantling of our economic and social model.[2]

A few days later, Frits Bolkestein, the Dutch EU commissioner for the internal market, used the phrase provocatively at a press conference. He justified the draft directive by referring to the difficulty he had in finding a plumber for his second home in northern France. The use of this allegory, which has since become emblematic, was intended to discredit left-wing opponents of the Services Directive and the Constitution by portraying them as xenophobic (Crespy 2019). Nevertheless, it can be argued that the ubiquity of this derogatory narrative gave an electoral advantage to populist politicians who used the threat of open doors to the East. There was at least a striking consensus in leading French journals that this fear of a wave of "Polish plumbers" dominated the discourses leading up to the rejection of the referendum (Favell 2008).

A second period began at the end of 2006, following the vote in the European Parliament on an amended version of the Services Directive. Most journalists refer to this figure in order to frame the debate on the free movement of services within the EU as a conflict between old and new member states. This has facilitated the framing of the debate along a cleavage between cosmopolitanism and nationalism, despite strong transnational trade union opposition to the Services Directive (Bethoux et al. 2018) and its legal extensions. Since the adoption of this directive, the media has paid relatively little attention to posted workers: the frequency of articles ranged from 30 to 67 per year between 2007 and 2012. However, the focus has shifted to a more economic and legal perspective. Indeed, journalists highlighted issues related to labour costs and social security law. The terms "taxes" or "contributions" were strongly associated with this second period. The media treatment of posted workers partly reflects the way the Viking and Laval cases were framed by the European Trade Union Confederation (ETUC) when they were examined by the European Court of Justice in 2007. Indeed, trade union representatives argued that the Court had given priority to economic freedoms over trade union rights by limiting the scope for trade unions to impose a collective agreement on a foreign company, as the regulatory powers of national administrations (Louis 2022). In left-wing dailies such as *Libération*, and even more so in

[2] "Villiers: 'La grande triche du oui,'" Philippe de Villiers' interview. *Le Figaro*, 15 March 2005.

L'Humanité – historically linked to the French Communist Party – these two cases are held up as symbols of the social deficit of European integration. At the turn of the millennium, this very liberal jurisprudence contributed to the reactivation of Eurosceptic rhetoric in France and the United Kingdom (Lindstrom 2010).

A third period began in the spring of 2012, when the European Commission presented its first proposal to improve the 1996 directive. While the French government was mobilising at the European level, the posting of workers became a prominent issue in national politics and received increasing media attention. The number of articles referring to posted workers was 573 in 2013. It increased slightly in the following years to reach 977 in 2016. Moreover, the percentage of articles with intensive use of the lemma "detach" (post) is almost twice as high as in the two previous periods (29.1%). In addition, there was a shift in media attention, which now focused on a different level of government: posted work was no longer seen as a diplomatic issue or one of ideological opposition to the EU construction process. Instead, it was seen as a national economic problem requiring local intervention by the French authorities. Posted work is now predominantly seen through the lens of the "company," be it the "client" or the "subcontractor." The lexical forms most strongly associated with this third period also include "construction," a professional sector often portrayed in the media as a place of social dumping and fraud. In 2013, the European Affairs Committee of the French National Assembly published an information report. This text denounced the detrimental effects of posting, considered a "tool of social dumping" linked to various frauds, and urged the EU to take measures to address this issue: the creation of a European agency to monitor mobile work in Europe, the creation of a register of unscrupulous companies and service providers, etc. The report, which received limited media coverage, triggered a heated parliamentary debate that was widely reported in the national press (Michon and Weill 2021). However, a general agreement has emerged at the centre to uphold the posted workers' status while refining the guidelines for its implementation. At the same time, representatives of the main exporting countries and their companies are becoming more involved in the European institutions. However, their demands are seldom fully disclosed and are confined to business-oriented newspapers such as *Les Échos*. Although a European directive was adopted in May 2014 to amend the conditions for implementing the 1996 directive, the controversies continued. The Commission considered the text insufficient and recommended a revision of the original directive in 2016. This was the subject of lengthy discussions between representatives of EU institutions, member states, and interest groups (Seeliger and Wagner 2020). The revision project received significant support from the French government, which has communicated extensively on the issue. A number of administrative measures, such as the introduction of fines for missing or incorrect

posting declarations, will then be implemented to penalise fraud under the so-called Macron Law,[3] named after the economy minister, who has been increasingly in the media spotlight.

The fourth period began with the start of the French presidential election campaign, during which the issue of posted workers was at the heart of the leading candidates' platforms. This phase also included the process of adopting a new European directive. In 2017, the issue of posted workers triggered a surge in media coverage, with 1,916 press articles, almost double the number of the previous year. Moreover, the share of articles with intensive use of the "detach" lemma continued to rise (29.6%). The "Molière clause" first appeared as a parliamentary amendment to the 2016 Labour Law. Its aim was to "protect workers and promote local employment" by requiring the use of the French language on construction sites involved in public tenders. The conservative right was the first to draw attention to this controversial clause. Regional leaders within the Les Républicains party championed it, and the term "clause" became most synonymous with this fourth period. In particular, it was criticised by the government and the radical left opposition, while the National Front considered it insufficient. The names of Marine Le Pen and Jean-Luc Mélenchon – respectively leaders of the main French far-right and far-left parties and presidential candidates – frequently appeared in articles on posted workers during this period, both calling for the abolition of posted workers' status: the former to defend the rights of exploited workers, the latter to defend the interests of national companies. Five years later, Emmanuel Macron emerged victorious in a "battle of statistics" against Marine Le Pen during the second-round debate of the 2022 presidential election, where they clashed over the extent of posted workers in France.[4] Presenting himself as a pragmatic reformer, Emmanuel Macron seized the opportunity to strengthen his international standing by championing the reform of the Directive, a campaign promise. Following his election, President Macron engaged in diplomatic efforts, meeting with several CEEC leaders in August 2017 to negotiate a compromise. Despite concerns about a possible "East-West split," as expressed in her speech before the vote by Élizabeth Morin-Chartier, the French rapporteur for the new Directive project in the European Parliament, the text was finally adopted in June 2018.[5]

The fifth and final stage refers to the initial phase of implementation of this reform, which was strongly advocated by representatives of the main countries importing posted workers. This reform strengthened the monitoring capacity of national administrations and was accompanied by the creation of a

[3] Law no. 2015-990 of August 6, 2015, for growth, activity, and equal economic opportunity.

[4] "Travail détaché: retour sur une bataille de chiffres." *Le Monde*, 22 April 2022.

[5] Directive (EU) 2018/957 of the European Parliament and of the Council of 28 June 2018 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services.

European Labour Authority (ELA). It also shortened the maximum legal duration of postings, while introducing the principle of "equal pay for equal work." At the onset of this recent period, press articles also highlighted challenges in expanding this reform to the transport industry, which was addressed in a special "package." Nevertheless, the frequency of articles mentioning posted work dwindles from 629 to 212 between 2018 and 2021. While the number of publications remains significant, the subject was not as central as in the two previous periods. The proportion of articles with intensive usage of the "detach" lemma has dropped to its lowest level at 15%. This period is also characterised by a dilution of posted workers in broader political news, demonstrated by the significant emergence of the expressions referring to the so-called "Yellow vest" movement[6] or the health crisis due to the COVID-19 pandemic. Posted workers are now routinely associated with major events in French political life and their impact on French people's daily lives, serving as one of the backdrops for journalistic narratives.

This longitudinal analysis of journalistic coverage of posted workers reveals both a dependence on the institutional political agenda and a general trend towards the territorialisation of representations. Although this type of labour migration is temporary, particularly from the point of view of the workers concerned, its representations are now firmly anchored in the French political landscape, and on a long-term basis. However, there is a need for a more systematic analysis of the diversity of media framings observed and the conditions of their differentiation, beyond the temporal factor alone.

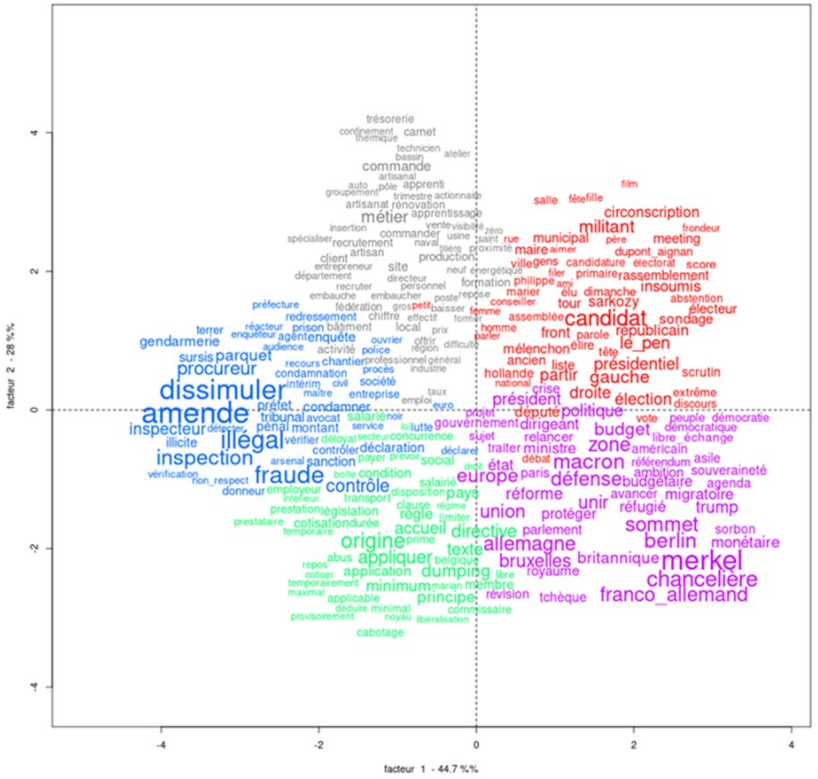
4. A Media-Framing Typology

Statistical tools can distinguish between classes of articles that represent different lexical worlds corresponding to different media framings of the posting of workers. By matching the results of the textual analysis with several characteristics of the publications concerned, we highlight the underlying logics of the different types of media framing. First, a partitioning method detects similarities between the lemmas in the articles and gradually arranges them into lexical worlds. Iramuteq uses a top-down classification method, where the corpus is successively fragmented to reveal classes that are as homogeneous as possible in terms of vocabulary and as dissimilar as possible from each other. On the basis of hypotheses formulated and a qualitative analysis of the corpus, a categorisation into five classes was chosen. Then, a factorial correspondence analysis (FCA) of the distribution of active forms across the five categories reveals both their similarities and their

[6] Scholars developed mix-method research on the journalistic coverage of this highly mediatized social movement (Baisnée et al. 2022).

differences. The most frequent lemmas are projected onto a factorial plane (see figure 2) and coloured according to the class to which they belong. Their size is also proportional to the importance of this correlation (chi-squared [chi2] test). The resulting graph shows the semantic fields and provides a visual analysis. The primary active forms of each class show a polarisation along two factorial axes that maximise the representation of the mass inertia of the corpus.

Figure 2 FCA on Lemmas and Characteristics of Articles Mentioning Posted Workers



The x-axis contrasts lexical forms related to anti-fraud measures with terms from registers related to both European diplomacy and French politics. While the lemmas most specific to the fight against fraud ("dissimuler" [hide] or "amende" [fine]) are located at the western pole of the graph, those related to French politics ("candidat" [applicant], "gauche" [left], "militant") or European diplomacy ("Merkel," "chancelière" [chancellor], "commission") are located

Table 2 Media Framing and Major Characteristics of Article Classes

Common Market Law -24.5%		Fighting Fraud -15.6%		Diplomacy -20.3%		French Politics -17.0%		Local Employment (22.6%)	
Most frequent terms									
origine (origin)	54.1	amende (fine)	75.6	Merkel	87.1	candidat (candidate)	50.7	métier (profession)	66.3
appliquer (apply)	56.4	dissimuler (undeclare)	78.8	chancelière (chancellor)	94.0	gauche (left-wing)	49.3	commande (order)	78.0
directive	42.0	illégal (illegal)	53.0	Macron	47.0	militant (activist)	71.6	site	47.7
dumping	49.0	fraude (fraud)	46.7	Berlin	75.5	Le Pen	53.1	production	59.5
texte (text)	52.4	inspection	57.8	sommet (summit)	75.7	présidentiel (presidential)	49.8	activité (activity)	38.6
Most significant variables									
High occurency	47.7	High occurency	25.1	Low occurency	37.2	Low occurency	29.0	Regional	34.9
Period 1	59.7	Period 3	21.1	Politicisation	28.6	Specialisation_No	18.9	Mid occurency	29.9
International	32.4	Regional	18.8	Period 4	27.8	Period 5	22.0	Politicisation_No	27.5

at the eastern pole, facing each other on the y-axis. Between these two extremes are expressions specific to local employment ("métier" [profession], "commande" [order]) or to the common market law ("origine" [origin], "appliquer" [apply], "Directive"), which also face each other on the y-axis. While the x-axis illustrates the dilution of the issue in current political events, the y-axis shows its shift from the international to the local level of governance. This polarisation on a factorial graph provides an overview of the diversity of media framing.

However, the analysis gains in precision through the use of more qualitative tools and the integration of new variables. On the one hand, we return the most frequent lemmas to their original context, i.e., the articles, in order to better interpret the statistical groupings. For each class, we identify the five terms and the three variables that are most significantly associated (chi2 test). We also identify the most significant articles per type of frame, according to the sum of the chi2 obtained for each of the marked forms. In this way, we not only identify five different types of media framing, but also correlate them with the characteristics of the publications. The variables chosen relate to the centrality of the employment of workers in the article, the period of publication, and whether the media is specialised or politicised.

4.1 Challenging Common Market Law

The first category includes articles that take a legal policy approach to the construction of the European single market. These articles examine EU legal texts and the resulting debates, mainly within the European institutions. Most publications in this category belong to the long initial period mentioned above, from the early 1990s until the vote on the Services Directive. These articles often focus on posted workers, with a frequent repetition of related vocabulary in their content, and typically appear in periodicals specialising in global news. One example is an article from 1996 in *Le Monde diplomatique*, a reference journal with a strong left-wing political orientation. The article examines the intergovernmental negotiations surrounding the first directive as symbolic of the legal construction of the EU's aporias, which are essentially driven by the ascendancy of economic liberalism.

> [John Major's representatives] could not, however, prevent the adoption of a common position on the application of the social rules of the host country to posted workers, particularly in the building sector. This is a combination of a lack of political will and the exorbitant blocking power conferred to conservatives of all kinds [...] European governments – including the left-wing and social-democratic ones in France and elsewhere – have made sure that the treaties cannot produce a social Europe. [7]

[7] "Une Europe des citoyens: l'Arlésienne du social." *Le Monde Diplomatique*, July 1996.

While this extract focuses on the British government at the time, the positions conveyed by journalists are often those of French political representatives, particularly in the European Parliament, with a certain degree of pluralism. For example, this extract from an article in the *News Press* in 2006 reports on the statements made in the European Parliament by the leaders of the Front National and the Parti Socialiste. It also suggests a certain convergence in the criticism of "social dumping" – one of the terms most associated with this class – and, more generally, of economic liberalism.

Nine months after the first reading, "the Parliament is rolling out the Bolkestein directive as a victory for social democracy combined with economic liberalism," said Marine Le Pen. According to her, "nothing will escape this Directive, not even social services, and it will not make fiscal, social and national dumping disappear. There will be social dumping at a cost, labour law will be legally flouted." Harlem Désir [Socialist MEP] concluded, "thanks to this compromise wanted by the 25, the Court and the Commission will gain exorbitant power to achieve the full single market without worrying about social dumping."[8]

In the late 2010s, articles of this first type again referred to the "Polish plumber." Amid debates about the problems with the 2014 implementing directive, a journalist specialising in European political news for the left-leaning daily *Libération* referred to the posted worker as his "illegitimate child."[9]

4.2 European Diplomacy

The second type appears a priori to be relatively close to the first, as publications in this class also focus on international news. However, the framing of the articles is different, as posted workers seem to be an issue in European diplomatic relations, among others. These articles often fall within the fourth period identified, which corresponds to the negotiations on the reform of the original directive. However, the issue of posted workers is not often dealt with in depth, but rather as a sensitive issue among others for politicians attending European summits. The article in the business daily *Les Échos*, from which this passage is taken, describes the French Employment Minister's entry into the international arena through the prism of her personal relationship with the recently elected President Macron:

> European baptism of fire for Muriel Pénicaud. At her first meeting with her European Union counterparts, the French Labour Minister was faced with a delicate task: blocking the emerging agreement in principle on posted workers. Entrusted by Emmanuel Macron to embody the French demand for a more social Europe, she engaged in a delicate diplomatic manoeuvre. It was not a question of opposing posted workers: the minister praised their

[8] "La directive services est définitivement adoptée." *News Press*, 15 November 2006.

[9] "Emmanuel Macron veut bétonner le détachement des travailleurs." *blogs Libération*, 25 August 2017.

> advantages and insisted on France's attachment to the European single market, which accounts for 60% of its foreign trade. Nor was it a question of pitting the east against the west of the continent. "The issues are broader than that," she said, before arguing that "the social Europe should rise to the level of the economic Europe."[10]

The adoption of a reform agreement between European labour and social affairs ministers was presented a few days later in an article in *Le Monde* as the French head of government's "first European victory for."[11] These articles are a kind of Hegelian "history of great men" in which the posted worker appears as a modest extra in the background. They are mainly published in general-interest dailies or the business press, often politically right-wing. This is illustrated by an extract from an article in *Le Figaro*, which transcribes Macron's first "major interview" with the right-wing national daily and seven other European newspapers after his election, in which "he presents his vision for Europe and outlines his main foreign policy principles":

> I would like everyone to bear in mind the historical responsibility of Europeans. We must promote a Europe that moves towards economic and social well-being. The objective of a protective Europe should also prevail in the economic and social field. By reasoning as we have done for years about posted workers, we are turning Europe upside down. We must not be mistaken. The main defenders of this ultraliberal Europe, in the United Kingdom, have crashed into it.[12]

We can see the extent to which the press has contributed to making the posting of workers a key issue in the political debates on EU construction, as an item of symbolic jousting but also of convergence for electoral purposes.

4.3 French Politics

The topic of posted workers has emerged as an important theme in French political competitions, including the 2017 presidential campaign, as well as in supranational campaigns during the European elections and subnational elections for local and regional positions. This framing as a crucial issue for French politics appears even more clearly in the last two periods, particularly during the debates on the reform of the European directive, as highlighted by generalist newspapers. However, this framing is less linked to the positions of the political parties on the left than those on the right. Admittedly, the radical left leader Jean-Luc Mélenchon is often portrayed as a scornful critic of the "ultra-liberal Brussels bureaucratic elite,"[13] particularly with regard to his

[10] "Travail détaché: entre diplomatie et fermeté, Paris tente d'imposer sa marque sur la scène européenne." *Les Échos*, 16 June 2017.
[11] "Travail détaché: première victoire européenne d'Emmanuel Macron. Un symbole politique d'importance pour Macron." *Le Monde*, 25 October 2017.
[12] "Emmanuel Macron: 'L'Europe n'est pas un supermarché.'" *Le Figaro*, 22 June 2017.
[13] "Les salauds de l'Europe." *Libération*, 22 March 2017.

criticism of the status of posted workers. In the following excerpt from the leading daily *Le Monde*, the far-right leader Marine Le Pen is also seen as approaching the issue from a European perspective, thus appearing to her own political camp to be too far removed from the most immediate concerns of her voters. If the posting of workers appears as a new cornerstone of the Rassemblement national's anti-migrant rhetoric, the issue remains primarily a national one.

> [Marion-Maréchal is] convinced that her aunt is complicating her job in this campaign by talking too much about finances and European directives. Marine Le Pen, who prefers that French people "read *journaux de Bourse* rather than *journaux de course* [stock-market rather than horse-racing newspapers]," gives the impression of balancing her argument by talking about immigration and posted workers, "political Islam" and secularism at the same time.[14]

In addition, the following excerpt from the business daily *La Tribune* shows how the issue of posted workers moves between regional and national political agendas. The article comments on Laurent Wauquiez's "regional preference" approach to "combating social dumping." It thus illustrates the re-appropriation of the far-right concept of "national preference" for electoral purposes by the man who is simultaneously regional president, leader of the centre-right opposition and therefore a natural candidate for the presidency. This concept was already theorised in the mid-1980s by defectors from the governing right to the National Front (Mayer 2007):

> The national and regional press, posters in the Lyon metro and social networks have been hammering out an unambiguous advertising message: "Regional preference for our companies." Signed: the Auvergne Rhône-Alpes Region, conquered in 2015 by Laurent Wauquiez, also president of the Republicans. [...] Officially, it aims to promote the relocation of jobs, to counteract posted work by imposing the use of French on public construction sites – see the clause Molière adopted by several regions. Unofficially, the communication strategy is clear: it is a subliminal message to the electorate of the Rassemblement National a few months before the European elections. [...] Laurent Wauquiez has never denied it: his term at the head of the French second largest region must be the laboratory for a policy he dreams of implementing one day from the Elysée [the headquarters of the French presidency].[15]

Outside of electoral campaigns, political action targeting posted workers is subject to another form of framing, more specific to the French government programmes that are being implemented.

[14] "Le FN à l'aube d'une crise d'identité." *Le Point*, 7 April 2017.

[15] "'Préférence régionale': Auvergne-Rhône-Alpes prise au piège des ambitions personnelles de Laurent Wauquiez." *La Tribune*, 26 June 2018.

4.4 Fighting Social Fraud

The fourth class concerns the fight against social fraud and is more associated with the third period and the regional press. We can observe a more general context of over-mediatisation of social fraud in the French news, more often focused on social benefits than on contributions (Dubois 2021), where posted work appears as one of its forms among others. The priority target of the national plans aimed at combating illegal employment in France is the use of posted workers by French companies, as confirmed by a major government communication campaign. This is well reported by journalists, who stress the complexity of the Labour inspectorate's task in the face of transnational fraud:

> Frauds are increasingly sophisticated: abusive use of temporary posting, cascading subcontracting, non-compliance with working time rules, health and safety regulations, creation of mailbox companies that send fake temporary workers to France, etc.[16]

Both national and regional media contribute to politicising public action programmes that lie at the intersection of social and immigration policies (Weill 2022). Financial aspects are also highlighted:

> Fraud abounds. The National Commission for Combating Illegal Employment estimates that 230,000 "posted workers" were employed legally in France in 2014, but that at least as many did so illegally. This phenomenon results in a loss of 380 million for Social Security.[17]

As a manifestation of this prioritisation, but also of the more localised representation of posted workers, media visits to "major construction sites" are presented. When French ministers visited a methane terminal in the North of France, where most employees were posted workers, one article discussed the tensions between different political and trade union positions on the issue of subcontracting fraud. A local councillor from the Front National revealed information about the so-called "surprise visit," denouncing it as a "public relations stunt" and claiming that the site was "promoting social dumping to the detriment of French employment." The article also reported that trade union members were present during the visit and protested against "social dumping":

> Escorted by the Minister of the Interior Manuel Valls (and therefore a large number of cameras), [Minister of Finance] Michel Sapin went to the liquefied natural gas terminal for a so-called "unexpected" visit: "It is a question of seeing whether the labor code, the European directives on secondment are well applied," the Minister's entourage explained "firmly" to Agence France-Presse. On the spot, some state officials are still upset. The so-called "surprise visit" was announced the day before by the local press. On the said day, employers advised their Italian and Portuguese workers to stay in their

[16] "Travailleurs détachés: les mille et un visages du plombier polonais." *Le Point*, 5 December 2013.
[17] "Le retour des 'fantômes' de Flamanville." *Le Monde*, 12 March 2015.

> mobile homes. The director of the local (Dunkirk) labour inspection, Mr. Olivier Moyon, who refused to participate in this "*masquerade*," denounced the expedition to his supervisor minister.[18]

Making the subject more concrete by looking at the work and working conditions of posted workers is a step towards focusing on local employment.

4.5 Local Employment

In this last class, which is closely linked to the fifth period, the impact on local employment of an old and routinised phenomenon is increasingly highlighted. The issues of "national preference" and the fight against social fraud are increasingly localised. This is particularly true in the press interviews given by representatives of trade unions and employers' organisations, who express their distrust of companies that use posted workers. They use examples of industrial sites or major construction projects, which are linked to more localised economic interests than in previous classes:

> Max Roche, President of Entreprises Générales de France, lectured Philippe Yvin, the head of the Grand Paris Express metro project: "We would not understand if the Grand Paris contracts were awarded to companies that use posted workers."[19]

The issue of "labour shortages" is also on the agenda. The use of posted workers is presented as a way of tackling this problem:

> "Even if we prefer the local solution, posted workers are also a possibility," says Jérôme Volle. (FNSEA). Before adding: "We warn employers to respect the payment of social contributions."[20]

The presence of these workers during a pandemic reinforces the perception of their daily lives outside the workplace, such as in Saint-Nazaire, a major shipyard city where they make up a significant proportion of the workforce (Casella Colombeau et al. 2022). However, they continue to be subjected to a process that essentialises their origins, emphasises their differences, and places them in a minority position subject to power relations. When posted workers are described as "workaholics," this essentialisation – which may initially be perceived as positive – can be used to legitimise exploitative workplaces. In the context of the COVID-19 pandemic, such an approach links posted workers with health risk and places the blame for the spread of the disease on them, even as it insists on the responsibility of companies:

> The first posted workers, from Eastern European countries, were due to arrive by road on the night of May 13 to 14, according to Michel Bergue

[18] "La machine bruxelloise s'emballe. Travail détaché, travailleurs enchaînés." *Le Monde Diplomatique*, April 2014.

[19] "En France, le BTP se retape." *Libération*, 19 October 2016.

[20] "Ces métiers boudés par les Français qui se tournent vers les travailleurs étrangers." *Le Figaro*, 26 July 2019.

> (Préfecture). And a first charter flight bringing a hundred workers was planned for May 17. Over the next few days, 1,500 posted workers are expected at Chantiers de l'Atlantique. And then, you push the turnstile with your hand, and you say to yourself: "Shit, I didn't pay attention." The subject also reopens speculations on the possible occurrence of Covid-19 cases: "We have nothing against these people" explains Jérémy Blandin, the welder-hull. But they are workaholics. Even with a fever, they are used to coming to work. If they don't, their company doesn't take them back the following month. That's what can be dangerous.[21]

The framing used to address the presence of posted workers in their daily lives is closely linked to regional dailies, which have established proximity to sources and readers (Neveu 2019, 32). This approach can both reproduce and counteract culturalising attributions, presenting the posted worker as integrated into local life through their own religious or political practices:

> The presence of these posted workers and their families is so significant in Central Brittany that last November, a polling station was set up in Loudéac for the Romanian presidential elections. 670 voters turned out! Far more than in Brest or Rennes [regional metropolises], where there were 184 and 420 voters respectively. Another indication of this massive presence: for the past year and a half, the Orthodox Church has been holding regular celebrations in Loudéac, in a chapel provided by the Catholic one.[22]

The same local journalist also emphasises the presence of former posted workers from Romania, who have decided to settle in Loudéac with their families, and who are now actively involved in the town council. They have also initiated a twinning project with their hometown in Romania.[23] This is a prime example of a local investment in European citizenship, which should not be solely associated with the "eurostars" of the upper classes (Favell 2008).

5. Conclusion

Our case study on the posting of workers in the French press reveals the political logics behind media coverage of the regulation of labour mobility in Europe. The salience of this issue is a result of the institutional agenda, with reforms at the European level being pushed by government representatives from predominantly labour-importing member states, most notably France. However, it is important to note that French companies have posted large numbers of workers to other EU countries – almost 100,000 by 2021 – and that the French government also defends their interests in international negotiations. Public intervention in relation to posting, whether incoming or outgoing, therefore seems to be based predominantly on national or even

[21] "Les chantiers de Saint-Nazaire ébranlés par le coronavirus." *Le Monde*, 22 May 2020.
[22] "Pourquoi les Roumains convergent vers la Bretagne." *Le Télégramme*, 29 July 2020.
[23] "La communauté roumaine pèse à Loudéac." *Le Télégramme*, 4 July 2020.

regional logics. Accordingly, our paper explores the reasons for the fluctuation in the media framing of posted workers between international diplomacy, national politics, and local economics. In major importing countries such as France, the growth of this phenomenon of labour migration has shifted from a European to a national and even local social problem. Since the eastward enlargement of the EU, the media have maintained socially situated representations of the posting of workers that are both biased and partial, focusing on the least qualified among them. However, these representations may be linked to the structure of the labour market in the areas most affected by the intensive and now well-established use of posted workers. In countries that are major exporters, such as the CEECs, it would be worth investigating how the media frame the posting of workers in terms of increasing the profits of service providers or, conversely, in terms of local labour shortages. We show that these variations in framing depend not only on the characteristics of the media, but also on the cycles of politicisation of this multi-level governance issue. These findings have implications for future research on related topics, whether in the area of media coverage of EU construction and policy feedback resulting from variations in media framing, or even methodologies for analysing large press corpus.

Our analysis of a large press corpus of more than 7,000 articles demonstrates the benefits of integrating different quantitative and qualitative tools. Qualitative content assessment is enhanced by quantitative textual analysis and vice versa. As far as our case study is concerned, the combination of clustering and factorial analysis makes it possible to categorise each article into different classes and to identify the different media framings on the issue of posting of workers. However, it is necessary to gain a deeper historical understanding of such a political issue, in particular through the periodisation of relevant articles, in order to provide sufficient detail on the political context of their publication. In addition, a quantitative textual analysis makes it possible to identify the most representative articles within each distinguished category and to attribute a degree of representativeness to the qualitative analysis of their content.

This work on the media framing of the posting of workers is part of a broader research project on its regulation, which varies its focus from one level of government to another. This project aims to examine both the logics behind the elaboration of European reforms and their localised implementation, from the European Commission to the company offices, construction sites, or agricultural fields where posted workers are hired. De facto, the highlighted diversity of media framing, from diplomatic affairs to daily local news, justifies the relevance of a multi-level approach to the study of such social policies, from the field of eurocracy to the welfare recipients (Barreault-Stella and Weill 2018). The article illustrates the heuristic value of "examining Europe under a localised microscope" (Pasquier and Weisbein 2004)

and, more specifically, of capturing the use of European law "on the ground" in transnational contexts (Fertikh 2017). Furthermore, it demonstrates the value of using media content in conjunction with other empirical data to gain insights into more localised contexts. In addition, we encourage a comparison of the processes of localised importation of international issues, such as the Israeli-Palestinian conflict. This conflict has been the subject of intense media coverage in France, as in other Western countries (Hecker 2012), and increasingly so in the daily regional press.

However, our findings also call for the study of the reception of this changing media content. The political implications of such variations in media framing of intra-European immigration and single market construction should be analysed. This diversity of framing is indeed part of an increasingly fragmented online news environment, where audiences are primarily matched with information that fits their prior beliefs (Cacciatore et al. 2016), which we can hypothesise are fuelled by concrete experiences. In the case of posted workers, it is important to better understand how and to what extent their presence in the main host countries has become part of the everyday life of their inhabitants. This will help to show how exposure to certain media content articulates with more tangible experiences to shape ordinary citizens' perceptions of EU construction (Gaxie et al. 2011).

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The Governance of European Labor Mobility. The Case of Low-Wage Migrant Work in Germany after 2020

Stefanie Börner *

Abstract: *»Die Steuerung der europäischen Arbeitsmobilität. Zur Neuregulierung migrantisch geprägter Arbeit im deutschen Niedriglohnsektor seit 2020«.* Since the COVID-scandals in German abattoirs, employment and working conditions of migrant workers have been the subject of intense debate. Applying a Polanyian framework of social embeddedness, the question is posed whether the working conditions of migrant seasonal, posted, or subcontracting workers have improved after 2020 and whether a process of social (re-)embedding can be observed. Data, reports, and documentations of the responsible authorities and leading trade unions in this field as well as plenary documents and protocols of the German Bundestag are analyzed. Once one moves away from the narrow focus on the meat producing sectors, it becomes apparent that overall progress has been made after 2020, but that these improvements are still quite singular and low-key. The legal steps to improve the working conditions of migrant workers in the low-wage sector and control their enforcement are extremely arduous with only very limited effects given the incremental approach on the one hand and employers' strategy to shift between the different labor law options depending on the legal situation on the other hand.

Keywords: Employment and working conditions, EU, Germany, labor law, migrant workers, occupational health and safety, posted workers, seasonal workers.

1. Introduction

In Western European member states of the EU such as Austria, France, Germany, and Sweden, as well as the UK as a former member state, wage differences within the EU and domestic labor shortages created a migrant working regime (Appelbaum and Schmitt 2009) that is known for its "organized

* Stefanie Börner, Department of Social Sciences, Otto-von-Guericke-Universität, Zschokkestraße 32, 39104 Magdeburg, Germany; stefanie.boerner@ovgu.de; ORCID iD: 0000-0002-7486-2899.

irresponsibility" as Labor Minister Hubertus Heil[1] described the situation in July 2020. Paradoxically, it is the same industries that have been declared essential during the pandemic and that are infamous for employing migrant workers, like seasonal or posted workers, under especially precarious conditions leaving them largely unprotected. In the situation of social exceptionalism during spring 2020 after the first political restrictions against the coronavirus took effect, French sociologist Dubet (2021) summarized this period as a "return of society" given people's new awareness of social interdependencies and the role of social institutions and institutional regulations in our lives. Some scholars even proclaimed a new age of solidarity that does not only see a heyday of civic solidarity but also a prominent role of "institutional solidarity" (Prainsack 2020, 127). Three years after the outbreak of the COVID-19 Pandemic in Europe, it is becoming increasingly clear that the coronavirus had created only a temporary situation of especially high salience, which increased the political and public awareness of the problems industries with an especially high transnational workforce face. So today, the question is whether the new solidarities proclaimed have had a longer-term effect thus improving the working conditions and social rights of migrant workers in Germany in sectors such as the meat industry, agriculture, transport, or parcel services.

The story mostly goes like this: Due to COVID-related labor shortages and the resulting exemptions from the travel ban of said groups, the German public became aware of the inhumane working conditions in the agro-food branch. While the German meat industry experienced an important re-regulation with the Occupational Safety and Health Control Act in 2020, the agricultural sector saw no major initiative to improve the situation because debates were dominated by a concern with food supply, which even contributed to a temporary deterioration of the situation. The state of the art is made up of single case studies (Sebastian and Seeliger 2022; Bogoeski 2022; Biaback Anong 2023; Möck et al. 2023; Birke and Bluhm 2020), country comparisons (Szelewa and Polakowski 2022; Birke and Neuhauser 2023), and studies that compare the German meat industry with the agricultural sector (Schmidt and Blauberger 2023; Schneider and Götte 2022). The comparisons show that it was not the exploitative practices that suddenly became debated among a wider public, but the specific circumstances in the German meat industry that allowed for a quick policy reaction. However, no matter how convincing the available case studies and comparisons are, they take a more situational crisis perspective. As far as working conditions are concerned, they represent

[1] See the press conference on the Occupational Safety and Health Control Act. Welt. Verbot von Werkverträgen: "Wir beenden die organisierte Verantwortungslosigkeit in der Branche." www.welt.de/politik/deutschland/video212449323/Verbot-von-Werkvertraegen-Wir-beenden-die-organisierte-Verantwortungslosigkeit-in-der-Branche.html (Accessed January 28, 2024).

only the tip of the iceberg and point to a systematic problem, namely the legal constructions and enforcement difficulties that make the scandalized conditions possible in the first place. In addition to the agro-food industry, the construction industry, the care sector, logistics (courier and parcel services), and transport belong to the most affected labor market segments, too. The devastating employment, living, and working conditions created by these transnational versions of atypical employment and the existing legal voids have posed a transnational social question to which, by now, EU law and national social policies have not been able to provide answers (Börner 2020; Faist and Bilecen 2015).

Therefore, with the following analysis I would like to challenge this crisis-driven narrative and study the potential changes from a broader perspective that does not concentrate on the two sectors alone but rather on the major legal spheres and implementation mechanisms at the national and supranational level. For the fact that the working conditions of migrant seasonal workers on German fields between April and October 2020 have even been worse than before, does not mean that there is no progress in the long run in this sector or other fields. Therefore, this article poses the question whether the working conditions of transnational workers across industries in Germany (i.e., migrant seasonal workers, posted or subcontracting workers) have improved since 2020 and whether a process of social (re-)embedding in a Polanyian sense can be observed. According to Polanyi (2001 [1944]), markets are socially embedded and in phases of blatant marketization and commodification, society begins to protect itself from the destructive forces of the free market. This gives rise to the assumption that increased efforts on the part of political actors can be observed to change this situation. Following Polanyi's assumption that individuals would refuse to subordinate unconditionally under a destructive market regime, COVID-19 could have helped migrant workers and the interest organizations concerned to better organize and mobilize not only for the improvement of said working conditions, but also the enforcement of existing occupational health and safety standards. Although the fact that food supply in Germany is highly contingent upon exploitable segments of transnational workforce was not new at all, it entered the public stage with a special force in spring 2020. Not only were labor shortages in industries such as agri-food and logistics urgent, but public awareness of working conditions, and possibly the political will to change things, was at an all-time high. So, the question is whether this constellation allowed for a re-regulation of the very working conditions and improvement of social rights or their implementation; or, to rephrase Polanyi (2001 [1944], 80): Did society

protect "itself against the perils inherent in a self-regulating market system" since 2020?[2]

In order to answer the research question, in the next section Polanyi's macro sociological theory and assumptions are introduced and discussed against the background of more recent developments. In section 3, the overall topic is developed in three steps. In the first two steps, the state of the art in the three labor law areas studied until the outbreak of COVID-19 in Germany is presented more in depth, namely of posting, subcontracting, and seasonal (or short-term) employment. These insights are then related to a broader migration and labor market theoretical perspective, which allows us to combine the Polanyian view with more recent theory developments (3.3). Based on this, an analytical framework of embeddedness is developed that guides the analysis. The results presented in section 4 are based on an analysis of data, reports, and documentations of the responsible authorities and leading trade unions in this field such as the DGB-led (Deutscher Gewerkschaftsbund) counselling network "Fair Mobility" (DGB FM) as well as on plenary documents and protocols of the German Bundestag since 2020. The analysis sheds light on the practices and strategies through which multilevel actors – trade unions, EU officials, national policy makers, workers – try to refine and redefine the EU's key principle free movement of workers and link it to specific ideas of justice and existing social policy and labor standards, thus tackling one of the EU's oldest controversies, namely the conflict between supranational market creation and national welfare states. Through their practices and choices, the actors contribute to the constant remaking of the workers' freedom of movement and therefore the everyday reproduction of labor mobility.

2. Labor as a Fictious Commodity

According to Polanyi, markets are socially and institutionally embedded. This means that markets are not independent from society's social structures, culture, and institutions, but form part of the complex system of human interaction and social institutions. Whereas for Polanyi it was the guild system that embedded the organization of labor "in the general organization of society" (Polanyi 2001 [1944], 73), today it is the welfare state including trade unions that renders all kinds of economic activities part of the social order in establishing reciprocal and redistributive relationships between individual actors. Instead of developing a sophisticated theory of social embeddedness Polanyi

[2] In Polanyi's theory of economic liberalism, self-regulating markets do not preclude the possibility of market regulations. On the contrary, "the road to the free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism" (Polanyi 2001 [1944], 145-7).

sets out the rise of market economy as a history of disembedding workers from their former social bonds and institutions: "The Industrial Revolution was causing a social dislocation of stupendous proportions, and the problem of poverty was merely the economic aspect of this event" (ibid., 135). The groups thus disembedded lack an institutional organization, regulation, and representation and hence social protection. The process of marketization, Polanyi emphasizes, grounds in the transformation of labor, land, and money into fictious commodities. Human labor is a fictious commodity because it "is only another name for a human activity which goes with life itself, which in its turn is not produced for sale but for entirely different reasons, nor can that activity be detached from the rest of life, be stored or mobilized" (Polanyi 2001 [1944], 75-6). Like the other fictious commodities, land and money labor had to be commodified by capitalist owners and liberal states to make it fit for purpose. Nevertheless, due to its inseparability from its human bearer, labor cannot be stored like genuine commodities that have been "produced for sale" (ibid.) without risking the price of being disembedded from society. Therefore, according to Polanyi, "the alleged commodity 'labor power' cannot be shoved about, used indiscriminately, or even left unused, without affecting also the human individual who happens to be the bearer of this peculiar commodity" (Polanyi 2001 [1944], 76).

Polanyi put so much emphasis in the fictious character of labor not only in order to hint at the significant differences between genuine and fictious commodities, but also to argue that the modern organization of work depends on this widely accepted misunderstanding because "the fiction of their being so produced became the organizing principle of society. Of the three, one stands out: labor is the technical term used for human beings, insofar as they are not employers but employed" (Polanyi 2001 [1944], 79). In periods of devastating commodification, public and private actors start to form counter movements in order to protect the people concerned and society as a whole from the destructive forces of the free market, a process Polanyi (2001 [1944], 136) called "double movement," the parallel process of liberal market expansion and the installation of countermeasures to protect society. However, the countermovement, i.e., the establishment of collective agreements and social security measures, is nothing class-specific, as Polanyi (2001 [1944], 169) and also De Swaan (1988), in his process sociological welfare state theory, have emphasized, but instead a matter of all societal forces because the general interest in social protection is endangered. This means that the self-protection of society is not only the task of the working-class movement but of society as a whole. Therefore, when Polanyi studied the re-embedding of labor in a tight corset of rules and standards during the 19th century, he thought of the state as the main actor in this play taking a "conscious social direction made effective through legislation" (Polanyi 2001 [1944], 134).

One hundred years after Polanyi's writing, according to Langthaler and Schüßler (2019, 210) "land, labour and money are now commodified in a highly interlinked way and on an unprecedented transnational scale," Europe-wide as well as globally. In the course of this process, labor seems to have again lost its human face and therefore the fiction of its commodity character wherever employees are in particularly poor negotiating positions given a lack of knowledge and familiarity with the responsible system. Since the history of European integration is also a history of market liberalization and the establishment of new labor migration regimes, the installation of the freedom of movement of workers as part of the European integration process added a transnational element to this fiction that Polanyi could not foresee. Germany, where low-wage work started to grow rapidly in the 1990s and transnational workers are indispensable today, has a relatively high share of low-wage work compared to other high-income countries in Europe (Appelbaum and Schmitt 2009). From a Polanyian perspective, the immigrant workers most affected from this marketization are socially disembedded in a double sense. On one hand, they are far away from their private networks and familiar context, and are housed in remote areas or immobilized in group accommodations. On the other hand, their social re-embedding in the society they work in through welfare states or EU regulations is deficient. The next section discusses the state of the art of this constellation and presents the EU's multilevel legal framework of labor law that contributed to the making of a specific section of European labor mobility and made the precarious working conditions possible.

3. Multiple Precarities in a Segmented Migrant Labor Market

This section lays out the legal background of the studied migrant labor markets segments and discusses the phenomenon from a migration and labor market theory perspective. When speaking about migrant workers – often called mobile workers – we have to distinguish between different legal status groups in order to understand their situation, different types of abuses and sector-specific practices. This explains why not only the legal status in terms of residency, but also (often) the type of employment make the difference. In this article, I concentrate on posted, subcontracting, and migrant seasonal (or short-time) workers. Although the meat industry and agriculture became the two major examples for these cases the main focus does not lie on these sectors but on the underlying legal constructions that allow for these practices.

3.1 Posting and Subcontracting as a Means to Recruit Cheap Labor

In order to recruit migrant workers from lower wage countries, the meat processing industry as well as other sectors such as care and construction until 2020 made wide use of two major employment constructions: posted work that gained importance especially after the eastern enlargement and subcontracting in which not the producers but external subcontractors such as temporary employment or work contract companies are officially employing the workers who are mainly from Eastern and Central European countries. Since 2007, Germany has been the country with the highest share of posted workers within the EU (B. Wagner and Hassel 2016, 168). According to most studies, in the slaughtering industry alone subcontracting accounted for more than 50 per cent of the employed workforce (Birke and Bluhm 2020, 39; I. Wagner 2018). The legal category of posted work is rather new. Posted workers are temporary workers sent by their employers to another European member state while they formally remain employed in their sending country (Weill and Prigent 2025, in this special issue). This constellation that is especially widespread in construction or the meat processing industry falls under the Posted Workers Directive (1996/71/EC) adopted in 1996.[3] Although on paper posted workers are subject to defined rights and social standards, these are often not accessible or unenforceable for the workers which is why posted workers live and work in a highly contingent "in-between space" in the national legal frameworks according to Ines Wagner (2018, 5). In addition, the directive introduced an exemption for the meat industry stipulating that working conditions of the sending country were to apply, whereas posted workers in the construction sector, e.g., were to be contracted under German conditions (Wagner and Hassel 2016). In 2014, this practice became illegal when the announced statutory minimum wage made a sector-wide minimum wage possible (Kuhlmann and Vogeler 2021, 522) and therefore subcontracting gained momentum as a means of choice in the meat industry.

These non-transparent employment arrangements resulted in a system of denied responsibilities that allowed for a "particularly effective exploitation of labor" (Sebastian and Seeliger 2022, 239, own translation). In contrast to posted work, subcontracting is not especially linked to EU law but nevertheless an employment practice which flourishes precisely in the transnational context of fundamental freedoms for the entrepreneurs rely on cross-border networks of intermediaries in Eastern Europe "who have provided them with a seemingly endless stream of workers" (Ban, Bohle, and Naczyk 2022, 103). Thus, scholars also point to the structural power these actors have gained in recruiting regions such as rural Romania:

> The intermediation function between this large reserve army of labour and the demand for cheap and seasonal work in Germany's meat processing

[3] https://eur-lex.europa.eu/eli/dir/1996/71/oj/eng (Accessed April 14, 2025).

> industry has been the terrain of competition between subcontracting conglomerates enmeshed in local politics (the so-called 'barons') and small-scale subcontracting intermediaries ('caporali') operating in a similar fashion to the gangmaster operators that have been studied for decades in Italian agriculture. (ibid., 108; for overviews, see Howard and Forin 2019)

According to Ban, Bohle, and Naczyk (2022, 108), who refer to the Romanian online paper *Newsweek*, the largest subcontractor in Romania, MGM Handel, hired around 1,700 Romanian workers for Tönnies alone in 2020.

Lillie and Wagner (2015, 157) emphasize that both employment constellations, subcontracting and posting, allow for regulatory arbitrage in order to switch between different regulatory frameworks so as to get the best out of different worlds and bypass certain unwelcome regulations:

> Firms use contracting to access expertise which they do not have internally, to externalize risks to less powerful firms […], to fragment employment relations, complicating and weakening worker representation (Wills 2009), and to place workers in peripheral operations under less protected regulatory systems. (Lillie and Wagner 2015, 161)

An example being the bypassing of minimum wages through subcontractors or that labor costs can be lowered through posting workers because the employed persons' security expenses are covered by the home country. The below-average working conditions are therefore not an unintended side effect, but a strategic decision by employers in highly competitive markets. The list of grievances documented by the research literature is long and has been subject to other EU member states' complaints (Wagner 2015, 203). It ranges from lower informal wages paid by subcontractors, poor safety and health standards, fraud with regard to hours worked, and social contributions to inadmissible wage deductions for housing, tools, and transportation as well as overpriced and substandard accommodation (Birke and Bluhm 2020, 39; Ban, Bohle, and Naczyk 2022, 107; Schneider and Götte 2022; Wagner 2018). A major inspection of the occupational health and safety administration of 30 large meat producing companies in North Rhine-Westphalia in 2019 brought to light around 8,800 legal violations, of which around 5,900 violations were related to working time law alone, as is argued in the preamble of the Occupational Health and Safety Control Act (Deutscher Bundestag 2020c).

With the Act to Secure Workers' Rights in the Meat Industry, the German government tried to prevent fraud surrounding social contributions in 2017. This initiative only took shape after a voluntary commitment of the six largest companies to guarantee labor and social standards for subcontracted workers in 2015 did not lead to any noticeable changes (Schmidt and Blauberger 2023; Schneider and Götte 2022). This illustrates the long and winding road binding regulations in the meat industry had to take before 2020.

3.2 Migrant Seasonal Workers in Germany

Agricultural seasonal work is the most vivid and most widespread form of seasonal work at the German labor market. Migrant seasonal labor in the agricultural sector has a long tradition that goes back to the 19th century as was already documented by Max Weber who bemoaned the "separation of workers into two main categories" (Weber 1993, 74-5, own translation). Today, German farms recruit up to 275,000 migrant workers from mostly Eastern and South-Eastern European member states each year (DGBM 2023). This renders seasonal labor migration in German agriculture a "just-in-time migration" that precisely aligns the quantity and timing of incoming workers to the specific needs of the respective industry (Biaback Anong 2023, 5).

Most of these short-term workers fall under the jurisdiction of German labor law that specifies short-term employment as an employment up to 70 days per year and exempts workers from social security contributions and benefits as stipulated in the Social Code 4, §8. Non-EU workers, so called third-country citizens, are subject to the 2014 Seasonal Workers Directive that was adopted by the EU in 2014 and transposed into German law three years later (Zoeteweij-Turhan 2017). However, German agriculture did not make use of the possibility to enact bilateral agreements with non-EU states before 2020 given that "the reservoir of free-moving seasonal workers from Central and Eastern EU Member States remained sufficient" (Schneider and Götte 2022, 273). As far as social rights and working conditions of migrant seasonal workers are concerned, according to critical accounts, the directive manifests the segmented labor market to the same degree as the short-term regulations (Zoeteweij-Turhan 2017). This is why seasonal workers' access to the German labor market is not under the same conditions compared to other mobile workers such as high qualified or posted workers although as EU citizens they should be subject to equal treatment in Germany.

In contrast to migrant employees in other sectors, seasonal workers are employed directly by agricultural businesses. Nevertheless, the Initiative *Faire Mobilität* (DGB FM), a special working group within the German Trade Union Confederation (DGB), documents the following main problems and labor rights violations: illegal deductions from wages, non-transparent working time documentation, the undermining of existing occupational health and safety standards, and inhumane housing with inadequate or lacking hygiene standards (DGB 2023, 2022c). Furthermore, short-term employees lack proper social insurance, i.e., they do not acquire entitlements for unemployment or pensions benefits and they often only have limited access to medical treatment, which is also highly dependent on the employer. There have even been cases of sick harvesters being denied medical care, as reported by some studies (Cosma, Ban, and Gabor 2020).

During the first Corona-induced lockdown in spring 2020, the situation even exacerbated. In order to secure the annual seasonal workforce and ensure the allegedly endangered food supply, German authorities, after opening the borders for mobile *essential* workers, extended the social security exemption from 70 days to 115 days thus covering exactly the 2020 harvesting season (Biaback Anong 2023, 6).[4] This left foreign agricultural workers without regular medical treatment in a global pandemic. In a regulation from April 7, 2020, that applied to those sectors declared essential, the German Ministry of Labor and Social Affairs extended the maximum allowed working time from 8 to 12 hours per day or from 40 to 60 hours per week respectively. From interview studies, we know that the mandatory quarantines and increased infection risk resulted in an exceptional situation that increased the dependence from the employers and caused even more social isolation and considerable psychological distress (Bogoeski 2022, 698-9). Overall, the treatment of harvesters during the first COVID-19 year in Germany is one of the most vivid examples in which workers are treated as commodities.

3.3 Migrant Labor Markets as Highly Disembedded Markets

From a macro theoretical perspective, the dependence of the food supply in Germany on a vulnerable and exploitable segment of the transnational workforce can be explained with Piore's (1979) segmentation theory according to which the labor markets of industrialized countries have a dual structure. While the first segment is made up of socially protected and well-paid jobs that allow for status protection (in Germany the so-called standard employment relationship), the second segment is characterized by volatile and low-paid jobs for which migrants are more likely to be available. Over the last decades, this dualization has also been institutionalized in German labor market and social security politics (Palier and Thelen 2010; Seeleib-Kaiser 2002; Emmenegger et al. 2012). Thus, the increasingly migranticized partial labor markets and fields of activity are a result of the interaction between different legal and interest spheres in which supranational regulations and the national residence regime, labor law, and social rights are closely interconnected with mainstream public and economic interests (e.g., food supply, Germans' mentality of "cheap meat") on the one hand, and the economic interests of migrants on the other hand, which in turn go hand in hand. Hence, more recent analyses from migration studies frame the whole complex of migrant labor as "migration industries" (Gammeltoft-Hansen and Nyberg Sorensen 2013) or "logistics of migration" (Krifors 2021), thus emphasizing the different actors, processes, and economic interests at hand that contribute to a commercialization of migration and the commodification of the mobile workforce. This also explains why this labor market sector is characterized by a "segmented

[4] In 2021, the period of exemption was slightly reduced to 102 days.

form of industrial relations" as well, stemming from an organizational weakness of trade unions in these industries and the underrepresentation of migrant workers (Wagner and Hassel 2016, 165). Therefore, trade unions and initiatives such as the partly DGB-funded *Initiative Faire Mobilität* and *Faire Landarbeit* have been calling for the introduction of clear regulations and to enforce fairer wages for a long time. So, despite the long list of fraud and legal violations, interest representation and mobilization in this area of precarious migrant work have been anything but self-evident. The reason for this lies not only in the low organizational degree of migrant workers, disinformation, and their lack of voice in elections (Ban, Bohle, and Naczyk 2022; Wagner 2015; Wagner and Hassel 2016), but also in the way German authorities organize the enforcement of EU law and the control of labor standards (Bruzelius and Seeleib-Kaiser 2023). "So far, there has not been the necessary cross-country and impact-oriented monitoring" (Deutscher Bundestag 2020c, 2, own translation). According to data from the German parliament, the number of annual inspections in the meat industry alone through the responsible Financial Control Unit (*Finanzkontrolle Schwarzarbeit* [FKS]), which is a subunit of the Customs Administration, declined steadily from 826 to 233 between 2009 and 2017 (Deutscher Bundestag 2019). These enforcement problems are well known in more countries than just Germany (Bruzelius and Seeleib-Kaiser 2023).

From a European integration perspective these studies show that migrant workers in the low wage sector are treated as "inferior denizens" (Schneider and Götte 2022, 273) that benefit from the free movement economically without being socially integrated. For them, social citizenship is out of reach. Other strands of research that put the perspective of the migrant worker center stage have emphasized their agency and strategies of resistance (Cosma, Ban, and Gabor 2020). However, as this social group mostly has to work under conditions that detach them from all kinds of social networks, these workers are socially detached in a double sense: not only that they live far away from their familiar social and institutional contexts in their countries of origin, but they also work under conditions largely shielded from and "virtually invisible" for the vast majority of the population, either in collective housing or in remote rural areas (Becker 2015, 12; Bogoeski 2022, 698). Therefore, the regulation of the transnational labor market is a task of both state and supranational authorities as well as the civil society. How successfully this task has been fulfilled since 2020 will be discussed in the following section.

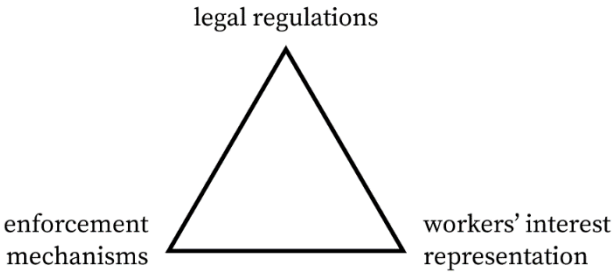
These different perspectives on the issue of low-paid migrant labor in Western countries document the complex field of transnational labor as a highly disembedded area of labor that – following the Polanyian idea – needs to be re-embedded in society. Long working hours, lack of rights, and miserable housing testify that the strawberry pickers, truck drivers, meat packers, construction workers, and many more tend to be treated as commodities

(however fictious) stripped of their humanity as frequent formulations like the popular comparison with modern slavery also underpin (Howard and Forin 2019; Langthaler and Schüßler 2019, 218). For the migrant workers themselves, their disembeddedness results in an excluding situation of "multiple precarities" (Neuhauser and Birke 2021, 65; Birke and Neuhauser 2023) of which the low or withheld wages, lacking social protection and medical care, precarious accommodation, and sometimes insecure residence status are only the most obvious. Given the overlapping contexts and neglected responsibilities that cumulate in these multiple precarities, it is justified to speak of "institutionalized exploitation" according to Bruzelius and Seeleib-Kaiser (2023, 166).

4. The Re-Embedding of Migrant Labor?

After the previous section presented the legal and labor-related specificities of posted, subcontracting, and migrant seasonal workers, this section analyzes the potential re-regulation in this area since 2020. It became clear that employers gain advantages in strategically exploiting two different types of legal loopholes: the legal provisions within a transnational labor market on the one hand, and the enforcement of the legally defined working conditions on the other. The weak bargaining position of migrant workers is an additional aspect that complicates the representation of interests. Therefore, the following analysis addresses these three mutually reinforcing aspects that can be illustrated in an analytical framework that entails the regulatory, democratic, and enforcement dimensions of social embeddedness. Given the number of actors and political levels involved and the complexity of work-related processes and industrial relations, proper working conditions and compliance with German occupational health and safety standards cannot be guaranteed as long one of these aspects is lacking.

Figure 1 Analytical Framework of Social Embeddedness: Legislation, Representation, and Enforcement



The analysis was conducted based on data, reports and documentations of the responsible authorities and leading trade unions in this field such as the DGB-led Initiative on "Fair Mobility" (DGB FM) or the reporting office for short-term employment, as well as on plenary documents and protocols of the German Bundestag since 2020.

So far, in the social scientific debate concerning the political consequences of the massive violations that came to the fore during 2020, a focus on events surrounding the first year of the coronavirus pandemic prevails. Most scholars argue that the successful launch of the Occupational Health and Safety Control Act in July 2020 was possible thanks to the window of opportunity created by the massive COVID-19 outbreaks in several meat production sites. This allowed the problem to be addressed not only as a specific occupational health problem but also a public health threat (Ban, Bohle, and Naczyk 2022; Möck et al. 2023; Schneider and Götte 2022). In this article, I refrain from analyzing the overall causes, political interests, and motives or public discourses surrounding this very first response and shift the analytical focus towards a closer examination of the re-regulations during the last three years and their potential effects from an occupational safety and social rights perspective.

Banning Subcontracts

The Occupational Health and Safety Control Act (OHSCA) strives to improve the working conditions basically through three different regulations. First and most importantly, employment law regulations prohibited the widespread practice of subcontracting workers through service contracts or short-term employment in the industry's so-called "core business," i.e., slaughtering and the cutting of meat, thus forcing employers to take over their employees from the subcontracting firm. Second, the act decrees the electronic documentation of working hours to prevent the violation of German minimum wage rules with exemptions applying to companies with fewer than 50 employees. And third, the act introduced standards for shared accommodation and occupational health and safety inspections. While the first two points refer to the core business of the meat industry only, the third point is universal. Across industries a minimum inspection rate will apply from 2026 onwards that aims to improve the enforcement of occupational health and safety standards. The introduction of an annual five per cent quote for factory inspections was already envisioned before the start of the pandemic, when the political representatives at the 96th Conference of Ministers of Labor and Social Affairs in November 2019 unanimously agreed to improve the concept for risk-oriented monitoring (ASMK 2019). At the same conference, the ministers also decided to urge the parliament to eliminate regulatory gaps that allow a legally compliant circumvention of occupational health and safety laws and

thus improve the working conditions for Eastern European employees suffering from wage and social dumping.

It has been criticized that the most important part of the act applies "specifically to the meat industry, even though similar exploitative practices are known from other sectors, which had also witnessed severe COVID outbreaks" (Schmidt and Blauberger 2023, 51). However, analyses must not stop here. The wide acceptance among the big players at the meat market could prove to have a positive effect on other sectors as well. Thus, §8 provides for the evaluation of the provisions of contract law until 2023 "including the restriction of the scope of the regulation for the meat processing industry." However, so far, the concentration on the core business even excludes other meat industries such as meat packing.

One year after its implementation, according to the observations of the DFG DGB FM and the NGG (Gewerkschaft Nahrung-Genuss-Gaststätten; the trade union of the food and gastronomy sector) the "Occupational Health and Safety Control Act has brought about drastic changes in the meat industry in Germany that could lead to a transformation of the toxic work culture in the industry" (DGB 2022a, 6, own translation). Following the DGB FM's documentation, by January 2021, most of the meat producing plants had offered the employees with subcontracts a permanent employment directly with the company: "Only single cases have come to our attention in which employees were handed contracts with a new time limit and a new probationary period" (DGB 2022a, 7, own translation). Two and a half years after the introduction of the law, the leading representatives showed themselves disillusioned of employers' bypassing strategies (NGG 2023). Hence, mid-term, the achievements will only be made permanent when also strengthening the enforcement dimension of the occupational safety and health triangle, i.e., effective controls. However, the new minimum inspection rate of five per cent will not come into force before 2026.

Table 1 Overall Employer Audits of the Finanzkontrolle Schwarzarbeit

Year	Employer audits de facto and planned	FKS posts filled out of all available positions
2017	52,209 from 55,000	6,586 out of 7,211
2018	53,491 from 55,000	6,740 out of 7,562
2019	54,731 from 55,000	7,193 out of 7,913
2020	44,702 from 55,000	7,056 out of 8,462
2021	48,064	7,900 out of 9,318
2022	53,182	8,240 out of 10,223

Source: Annual Costums Statistics 2022, 2019 (Federal Ministry of Finance); (Deutscher Bundestag 2020a; 2023b, 2023d).

Among the over 50,000 inspections conducted by the FKS (see table 1), the two COVID-19 focus industries are by far not those that form the FKS's priority. Construction, gastronomy, and transport including logistics together

combine more than 30,000 controls per year (Deutscher Bundestag 2020a). These sectors saw some dynamics as well. On July 1, 2023, a new bill implementing the EU Road Traffic Directive (2020/1057),[5] which regulates the applicability of the posting law to the road transport sector, came into force. Among others the law re-regulates the maximum working hours, minimum rest periods, and rest breaks of drivers and applies the electronic Internal Market Information System (IMI) in order to facilitate controls in the future. Thus, street transport is now treated under the German Posted Workers Act too, which was previously excluded from the Amendment of the Posted Workers Act that entered into force in July 2020. This amendment implemented the revised Posted Workers Directive of the EU into German law. The amendment extends the working and employment conditions that apply to posted workers in Germany as specified in the directive. For the FKS, each of these developments poses a further challenge that requires more resources, which is further complicated by the fact that it has not been possible to fill the available positions in the past as can be seen from the table. Thus, in order to be able to assume the new responsibilities, the FKS division was increased by around 940 positions (Deutscher Bundestag 2020b).

In this context, it is also worth mentioning a further political initiative that tries to ride the wave of the successful re-regulation in the meat producing sector. In May 2023, the Federal Council called on the German government to ban the awarding of work contracts to subcontractors in the courier, express, and parcel service industry as is also demanded by the Left Party and the service trade union Verdi. Right now it is debated whether this proposal is compatible with the constitutional and EU law, which was confirmed by a first expert opinion in September (Kärcher and Walser 2023).

With respect to the OHSCA's second area, electronic recording of working hours, the representatives draw mixed conclusions documenting no noteworthy violations against the new requirements so far. However, the working time reform in practice often comes with a growing workload and densification for the workers who have to accomplish the same amount of work in less time now (ibid., 8). Despite the industry's growing responsibilization and the legal provisions, accommodation and social integration are the two fields with the least progress. Union representatives "continue to encounter accommodations that are severely overcrowded, or with significant deficiencies in equipment, hygiene conditions, electricity and water supply, and fire protection" (DGB 2022a, 11, own translation). Besides these ongoing problems with accommodation standards, the overall work-related precarity did slightly improve, which is also documented by the statistics on the DGB FM's consulting practice. Between 2020 and 2022, the meat industry slipped from second to

[5] https://eur-lex.europa.eu/eli/dir/2020/1057/oj/eng (Accessed April 15, 2025).

fifth place among the most consulting-intensive industries and the absolute numbers of cases declined from 943 in 2020 to 507 in 2022 (DGB 2022b).[6]

As illustrated by the regulatory triangle, a successful employment safety regime also depends on the fact that employees' interests are represented through works councils and trade union activities. Thus, the third area to look at is the question of whether the 2020 law contributed to giving migrant workers more voice. Without a doubt the OHSCA did unleash internal processes, that helped to question the former dependency and power relationships. Before in spring 2022 the first regular elections took place, in some cases the new staff members were able to participate in preponed works council elections and some former service contract employees even successfully stood for election (DGB 2022a, 10). However, it is important to mention that the former subcontractors are trying to find a new role and maintain their influence as well. For instance, some have taken over administrative jobs, some work as job agents or foremen. Therefore, in December 2021, the NGG called for a regulation of cross-border employment agency in order to allow for a fairer recruitment of foreign labor (NGG 2021). The numerous campaigns and information events organized by the NGG and the DGB FM are another effective instrument in empowering the target group. Between September 2020 and December 2021, more than 300 events took place in front of the factory gates, in which representatives informed the workers about the new law and their rights. In January 2022, the NGG managed to finalize a binding sectoral collective agreement, which raised the wage to 11.50 euro in 2023 and 12.30 euro starting in 2024, thus ending the area of tarifflessness in the meat sector. According to the NGG, lots of migrant workers participated in the warning strikes once they heard about the new law.

Regulating Seasonal Work

With regards to the political developments in the legal area of seasonal or short time work since 2020, these are usually said to be nonexistent since the parts of the OHSCA that are not sector-specific – an increase of occupational health and safety inspections – will not show effect before 2026. According to the bill, the federal government estimated an additional staff requirement of 25 persons in 2021 (Deutscher Bundestag 2020c). A supranational sector-specific policy leverage will also show its effect within the next years. Between June and December 2021, EU actors agreed upon the reformed Common Agricultural Policy (CAP) 2023–2027, which is tailored towards a greener CAP, but also introduced a social conditionality element. This means that the direct payments for farmers are now linked to whether farmers respect social rights. More specifically, it strives to improve on-farm safety and health and

[6] The consulting numbers do not show absolute numbers of violations. However, they provide an impression about the differences between sectors, although other factors that influence who is seeking consultation should also be taken into account.

more transparent and predictable working conditions. Other aspects of labor law such as wage regulations are not covered by the social conditionality. However, since it is not specifically tailored towards the working situation of transnational workers, its effectiveness will not be comparable to the OHSCA's.

As we have seen in the previous section, seasonal workers are especially affected by wage fraud. Therefore, the gradual increase of the statutory minimum wage to 12 Euros as of October 2022 is a crucial step in improving minimum working and living conditions of this vulnerable segment. According to recent FKS data, wage fraud increased slightly last year compared to 2019, when less violations were detected with more inspections than in 2022 (cf. table 2). After the two seasons of 2020 and 2021, which were dominated by infection control against COVID-19, the frequency of health and safety inspections was scaled down again. Right now, farms do not form the focus of the FKS and probably will not for the time coming given the situation and legal developments in other industries.

Table 2 FKS Farm Inspections and Initiated Proceedings against Infringements

Year	Number of Farm Inspections	Violations of the Minimum Wage Act[1] (compared to all types of violations)
2023 (01–05)	179	38 (92)
2022	599	63 (254)
2021	829	96 (257)
2020	1.194	97 (312)
2019	707	55 (185)

[1] Number of initiated proceedings for misdemeanor (Deutscher Bundestag 2023d).

In addition to the further development of the minimum wage, there have been some smaller changes that apply more directly to seasonal workers. In April 2021, the then grand coalition of the conservative party and social democrats made it compulsory for employers to report the existence of health insurance for short-term employees to the central reporting office for short-term employment (*Minijobzentrale*) (Deutscher Bundestag 2020d). The extended reporting requirements entered into force only in 2022, while for the 2021 season the COVID-19-related exemptions for seasonal workers were extended, meaning that the employment of seasonal workers free from social security requirements was allowed for up to 102 working days instead of 70 – a fact that was only criticized by the left and the green party as is shown by the exemplary quotation from Beate Müller-Gemmeke during the parliamentary debate in April 2021:

> We already have far too much precarious employment in seasonal work. Here, physically hard work meets meager wages and poor housing. Time and again, health insurance coverage is lacking. People are then left to pay for their treatment. The losers of short-term employment are the employees themselves, it is the people. This exploitation here in Germany, here in

> the fields on our doorstep, must finally come to an end. (Beate Müller-Gemmeke, Green Party, Deutscher Bundestag 2021, 28552)

The amendment aims to improve the health insurance coverage for this type of employment and provides for an evaluation of the effectiveness of the measure by the end of 2026 (SGB IV, §28a, 9a). In 2022, 22 proceedings on the new reporting violations were initiated (Deutscher Bundestag 2023e). Employers also comply with this insurance obligation if they take out a private group insurance policy for short-term employees in which they act as the policyholder. However, group insurance schemes are known for their limited benefits and do not cover the treatment of chronical disease, for example. Furthermore, these plans do not entitle workers to wage replacement benefits (DGB 2023, 30). According to the reported data, migrant seasonal employees in the agricultural economy are mostly covered through private group health insurance (Deutscher Bundestag 2023a, 3).

In August 2022, the Act implementing EU Directive 2019/1152 on transparent and predictable working conditions in the European Union entered into force, thus underpinning the social conditionality of the Common Agricultural Policy one year earlier. The 2019 Working Conditions Directive that is also relevant for temporary work or posted employees aims at improving the minimum working conditions and introduces obligations for employers to provide information about the employment relationship such as end dates, working time, overtime, or paid leave. The determination of weekly working times and a daily maximum means greater transparency, which is crucial not only for seasonal workers but also for other sectors in which working time is a sensitive issue, for instance in-house care or transport. However, the DGB FM criticizes that if the employer has not fulfilled his obligations the burden of proof remains with the employees (DGB 2023, 35). This is a general weakness of the German enforcement regime, where the enforcement of claims is of a civil law nature, i.e., aggrieved employees have to sue their employer to exercise their rights. This also means that even after the FKS detected an infringement, "harmed employees are not informed of any violations of the statutory minimum wage, against industry minimum wages in accordance with the Employee the Posted Workers Act (AEntG) and against lower wage limits under the German Temporary Employment Act (AÜG) in their company" (Deutscher Bundestag 2023c, 6, own translation). Thus, even when employees have sufficient information, the hurdles for migrant workers to bring a rights violation to court in Germany are still very high. Accordingly, the enforcement problematic does not end with the structural reasons preventing more widespread controls, but continues at the individual level.

5. Discussion and Conclusion

Based on three interrelated pillars of occupational health and safety – political regulation, administrative enforcement, and interest representation – I studied the social embeddedness of EU migrant labor after 2020 in this article. The analysis focused on posted, subcontracting, and migrant seasonal work as three labor law areas with especially high numbers of transnational workers in the German low-wage sector. Once one moves away from the narrow focus on the meat producing sectors, it becomes apparent that overall progress has been made after 2020, but that these improvements are still quite singular and low-key. While the Occupational Health and Safety Control Act is a gamechanger with loopholes for former subcontractors and regular employers, developments in seasonal work bring incremental improvements at best, but do not systematically address the overall abuses. Furthermore, the most recent political activities such as the proposal to also ban subcontractors in the parcel service sector hint at a role model effect of the OHSCA that might gain some traction in the future. Apart from this, it seems that the influence of the pandemic was overestimated, especially under the impression of the events in 2020. The analysis shows that bigger parts of the legal and representational developments go back to long-lasting political debates as well as the growing influence of union actions and well-connected organizations. In particular, the DGB-led and partly publicly financed initiative Faire Mobilität (DGB FM) is a well-established actor in this field whose expertise and experience is recognized and consulted by political parties. For instance, the idea to improve the administrative leverage so as to enforce occupational health and safety standards that is now part of the OHSCA goes back to an initiative from 2019.

The example of migrant low-wage workers in Germany provides insights into the processes through which the transnational mobility of workers is governed in Europe. First, it is a highly small-scale process with mainly sector-specific regulations. They are very slow to improve the working conditions of migrant employees and therefore have only very limited decommodification effects. Second, it became clear that the creation of European labor mobility is a multilevel process in which responsibility for social security extends across different levels of political action. Besides supranational and national regulations the enactment practices at the local level (including the financial and personnel resources of the responsible authorities) have a crucial impact here. Thirdly, the analysis illustrates the interdependence of the three dimensions of social embeddedness: Particularly in view of insufficient enforcement and monitoring capacities, effective occupational health and safety can be improved in many places through the in-house implementation of measures under works constitution law that enable a democratic co-

determination of mobile workers. For this reason, improving the legal status of mobile workers by means of direct employment regulations proves to be an effective instrument.

The immense efforts to improve working conditions of migrant workers in the low-wage sector as well as their enforcement are an expression of a society that strives to protect itself from a destructive "culture of commodification and marketization" (Aulenbacher, Bärnthaler, and Novy 2019, 106). Long before the pandemic broke out, trade unions and other civil society organizations repeatedly pointed out the unbearable and sufficiently documented employment and accommodation conditions that result from deliberate circumvention strategies on the part of entrepreneurs in a complex multilevel system and amidst a crisis of enforcement. However, overall, the legal steps to improve the working conditions of migrant workers in the low-wage sector and control their enforcement are extremely arduous with only very limited effects given the incremental political approach on the one hand and employers' strategy to shift between the different labor law options depending on the legal situation on the other hand.

In the context of the European internal market, its regulation and the emergence of transnational society, these disruptive forces hints at the various imbalances the integration process has produced. Although Polanyi has arrived in Brussels (Caporaso and Tarrow 2009) and despite the recent "inclusive turn" (Huguenot-Noël and Corti 2023; Kilpatrick 2023), the transnational labor market, the massive wage gap between member states in Eastern and Western Europe, and the fragmented responsibilities within the EU's multilevel regime have brought forth an almost invisibilized transnational workforce that is especially prone to become exploited. In a developed social market economy as Germany, this overall situation of institutionalized irresponsibilities produced especially vulnerable strata of the mobile workforce that is socially disembedded in a double sense and seen as the new transnational reserve army with seemingly endless reserves. As far as the social and political integration of Europe is concerned, this constellation results in a number of political conflicts. In the Northern and Western European host countries, it creates social tensions and resentments within the traditional workforce. In the Eastern and South-Eastern European sending countries as well as in some candidate states, the status as second-class workers results in feelings of anger and political conflicts between the involved countries. The marginalization of such crucial segments of the workforce is an anomaly of the EU-wide (and beyond) division of labor. While the creation of the European single market was a successful instrument of Europeanization during the first decades of European integration, today the question of how to reembed this market and its labor mobility regime arises in order not to endanger the achievements of European economic, political, and social integration in the long run.

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A Multi-Fractured Governance: Understanding the Many Pasts and Presents of European Labor Mobilities

Isabella Löhr *

Abstract: *»Multi-Fractured Governance: Konkurrierende Vergangenheiten und Gegenwarten europäischer Arbeitsmobilität«.* This postface reviews the main findings of the nine contributions that comprise this Special Issue. Starting from current trends in migration research that critically engage with (academic) knowledge production on migration, the postface examines how the articles contribute to the further development of these perspectives. I argue that critical and reflexive approaches tend to overlook less contested physical movements such as European labor mobility. In this context, the postface contours the added value that the sociohistorical approach of this Special Issue provides. The articles invite us to broaden our analytical perspectives by incorporating issues related to social rights and social security, which have long been less considered in migration research. The postface suggests placing special emphasis on three elements that recur throughout the articles: the postcolonial legacy of categorizing European labor mobility; the particular impact of migrant agency in contesting, negotiating, and shaping the governance of labor migration; and the fragmented, contingent nature of transnational governance schemes.

Keywords: Labor mobility, social rights, postcolonialism, migrant agency, European institutions, migration research.

1. Bringing Less Contested Movements in[1]

It is happening with increasing frequency: As we pass by a store or restaurant, we see notes on the door that ask us to understand why the shop has only limited opening hours or is closed. Or we see a brightly colored advertisement inviting applications for open job positions. The background story is mostly the same: a labor shortage or a dearth of qualified employees are forcing

* Isabella Löhr, Leibniz-Centre for Contemporary History Potsdam / Freie Universität Berlin, Am Neuen Markt 1, 14467 Potsdam, Germany; isabella.loehr@zzf-potsdam.de. ORCID iD: 0000-0001-7945-5259.

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business owners to reduce their full range of goods and services. Although demographers have long predicted the unstoppable ageing of European societies and cautioned against the social and political consequences thereof since the 2000s, their warnings have received little attention. Only now are the consequences of the generational shift of the baby boomers – from contributors to the economy and social welfare systems to its beneficiaries – becoming clear in everyday life. Interestingly, though experts consistently propose a proactive migration policy as a possible solution, the connection between social welfare systems and migration has remained weak, both in public and academic discourse. It is only now – in view of acute labor shortages, the coming retirement wave of the largest boomer cohort, and controversies about immigration schemes and the deportation of skilled and employed workforce to the Near East – that the interrelation between migration and social policies has become a sensitive issue.

As soon as we delve into this subject matter, we note that scholarly debates have not paid sufficient attention to the relationship between mobility and social (security) rights. Migration research has long preferred to focus on immigration policies and to produce knowledge primarily in the context of the political quest to "integrate" migrants into a society that is imagined as ethnically and culturally homogenous (Bommes and Tränhardt 2010). Although some scholars have expressly underscored the social policy dimension of migration, especially since the 1970s, this perspective has been eclipsed by perceptions of migration as a distinct matter of culture and ethnicity (Lucassen and Lucassen 2015; Bojzadijev 2008; Karakayali 2008). Moreover, the paradigm of the freedom of movement – which has been the primary force structuring and reconfiguring the physical movement of people in the European Economic Community and its institutional successors since the late 1950s – did not play a major role in debates on the history and present of (postcolonial) migration in Western European societies (Eldridge, Kalter, and Taylor 2022; Buettner 2016).

In recent years, migration scholars have begun to critically engage with monolithic perspectives that comprehend migration first and foremost as a matter of "integration." This paradigm is increasingly understood as a political concept that should be categorically separated from the analytical toolbox and language of migration researchers (Favel 2022; Schinkel 2017). Hence, current debates in migration studies attempt to understand how statistics, social theory, history, and other disciplines are and have been involved in drawing sharp distinctions between "majorities" and "minorities," "citizens" and "migrants," or "legal" and "illegal" mobile persons, thus contributing to the depiction and definition of particular mobile groups as "migrant" and nonbelonging (Favell 2022, 3). Accordingly, critical migration scholars are trying to grasp how both perspectives – policy-relevant studies and those that take "integration" as a theoretically granted concept – contribute to normalizing a

national and ethnicized view on belonging and social coherence. Reflexive migration research augments such debates by paying particular attention to the role that (academic) knowledge production plays in rendering migration "a problem" – one that, so the narrative goes, would menace social cohesion and therefore should be subject to (restrictive) political intervention. Reflexive migration studies invite us to critically engage with the terms, concepts, and methodologies we as researchers use. The aim of this approach is to enhance our understanding of how academic knowledge production co-produces the "migrant other" and how researchers should deal more consciously and cautiously with the historical, political, and material conditions that shape not just their own field of research, but also the conflicting societal negotiation of privileging or discriminating against moving people (Stielike 2022; Ruppert and Scheel 2021; Horvath 2019; Braun et al. 2018; Nieswand and Drotbohm 2014). Thus, a reflexive perspective complements the effort to better understand how discourses on migration substantially contribute to stratify society, and it does so by scrutinizing the role of the researcher and the research field in the construction of migration as a "social fact" that contributes to the fabrication of social hierarchies (Pott and Dahinden, forthcoming; Stielike et al. 2025; Amelung, Scheel, and van Reekum 2024).

Why are we tracing this line from current trends in migration studies to this Special Issue on European labor mobility? As vibrant and innovative as these approaches are (and I write this as someone who forms part of this research endeavor), the minor importance of labor mobility and the paradigm of free movement within the European framework remains conspicuous. Even though this strand of research touches upon a broad range of issues (e.g., citizenship, border technologies, religion, gender, and race), social rights (as an argument and a tool to shape national and European migration regimes) continue to occupy a less prominent role. This is astonishing for two reasons. First, historical migration studies argued early on that the emergence of restrictive migration and border regimes in the 1920s stemmed not only from the continuing effects of restrictive population managements during the First World War; they also resulted from political attempts to secure social peace by coming to an accommodation with increasingly powerful trade unions. To this end, governments in Europe facilitated access to labor markets for foreign workers in the 1920s and sought relatively equal treatment of foreign and domestic workers in terms of remuneration and social rights (Reinecke 2010, 375-8). Second, as *Sebastian Büttner, Karim Fertikh,* and *Nikola Tietze* point out convincingly in the introduction, the idea of selectively granting social rights to mobile workers to support national economies was only suspended in the 1930s and 1940s, but it was re-activated in the context of forging a nascent European community (Büttner, Fertikh, and Tietze 2025, in this issue). Seen from this vantage point, the essays in this Special Issue bring a long-disregarded subject forward, offering rich and multifaceted perspectives that

range from the social rights of colonial workers in France at the beginning of the 20th century to Serbian tech professionals in Berlin in the 2020s. Their main accomplishment is to go beyond an examination of contested movements – a major talking point of conservative, populist, and far-right groups – and to bring in perspectives on movements that are considered much less scandalous in society. The articles avoid falling into the trap of presenting a utilitarian argument about the usefulness of border-crossing mobility for European economies and welfare systems, and they introduce us to complicated stories of intersecting mobility hierarchies, the convoluted interrelation between labor-related privileges and discrimination, and the meaning of subaltern agency and institutional elite projects. They elaborate the modes of action that have produced European labor mobility, illuminating the historical legacies and trajectories that continue to exercise formative influence, as well as the struggles that stand at the heart of the governance of labor mobility. The authors develop a nuanced understanding of how and why mobility rights are closely intertwined with social rights, examining the integral role that unequal, partly postcolonial migration rights management played for the European project, and assessing the key role of mobile workers in the genealogy of the contested and contingent history and present of European labor mobility.

2. Complicating the History of Free Movement in Europe

Against this background, the nine contributions to this Special Issue open up a perspective that broadens our understanding of migration regimes in and across Europe. The articles illuminate a field of research with the potential to significantly expand our knowledge about how mobile inequality has developed in the transition from imperial to European governance and by means of institutional and juridical policies at the national and European level. The analytical heart of the articles is situated at the intersection of social rights and the regulation of migration in a transnational and socio-historical perspective. The authors scrutinize the main mechanism for regulate border-crossing mobility in transitional periods: the fight for, as well as the granting (and revoking) of, social rights to mobile workers. Furthermore, the Special Issue offers readers a long-term perspective that integrates historical and contemporary views on the actors, institutions, subject matters, and modes that gradually set European labor mobility in motion. This includes the usual suspects, such as transnational and, from the 1950s on, European institutions, expert groups, governments, trade unions, and employers. What characterizes the contributions, however, is the attention they focus on the voices

and perspectives of the migrants themselves. The authors thus take up the challenge of actively integrating the perspectives of mobile groups into the analytical framework. In this way, the Special Issue opens up a broad thematic spectrum that discloses the complex processes in which institutional, political, social, and private actors negotiated the implementation of mobility rights at the intersection of migration, labor market policies, and European integration.

This multi-perspectival approach extends our knowledge in several respects. First, it allows the authors to detach the history of European labor mobility from the institutional history of European integration. This conceptual shift substantially broadens our insights into the making of a complex and at times contingent web of legal, social, political, and mundane norms, regulations, and practices. This shift results from our conceptual decision to put migrant perspectives center stage. This approach ensures that the case studies remain sensitive to the role that power asymmetries played in the making of European labor mobilities. Instead of approaching issues of power exclusively top-down through a close analysis of European integration policies (and their concomitant tensions), the Special Issue thus suggests a broader framework that situates the history of European labor mobility at the interface between transnational institution building, the (post-)colonial history of a particular socio-legal mobility regime, and a multitude of interrelated yet competing actors. Additionally, as *Buettner*, *Fertikh*, and *Tietze* outline, the chapters connect the endeavor to understand the making and the many transitions of labor mobility with the production of legal, statistical, or organizational knowledge used to categorize moving people, to sort them in or out, to draft regulatory schemes, or to negotiate the practical reach of legal rules. The Special Issue therefore infuses a rich complexity into our understanding of the history of European labor mobility. Readers can go beyond institutional narratives and immerse themselves in a constantly progressing interrelation between social, political, and institutional spheres, between labor migrants, politicians, experts, judges, and bureaucrats, all in a historical setting that went through major transformations since the 1950s.

Yet this Special Issue owes its particular strength also to a long-term perspective that fundamentally enlarges our understanding of the social, political, and legal contingency of labor mobility rights. Instead of beginning with the Treaty of Rome in 1957, which proclaimed the fundamental freedom of movement for the first time, the contributions span a time period that reaches from the turn of the century to the very present. In so doing, the Special Issue situates the particular way in which historical and contemporary actors shape(d) the relation between social and mobility rights in the post-colonial transformation of European societies. In so doing, it connects with a growing body of literature that criticizes and deconstructs discourses and policies of migration in Western Europe by emphasizing their colonial past

(Mayblin and Turner 2022; Boatcă 2021; El-Enany 2020). This conceptual decision has a considerable impact on how we conceive of the subject matter, seeking as it does to detach the analysis from political and institutional success stories of an increasingly integrated and rights-based European social space. This opens up important new insights into the history and sociology of European integration that until now have remained a tenacious blind spot with regard to the long wake of its imperial past. Going beyond the institutional histories of bi- and multilateral labor agreements allows us to include examinations of the vesting and de-vesting of rights, and to keep a close eye on (post-)colonial legacies that extend far into the European postwar history of labor mobility. The authors thus document a complex, non-linear, and controversial history in rich and inspiring ways. They provide sweeping insights into the (post)colonial side of the principle of free movement; they place the perspective of the migrant workers front and center; and they tie this history back to the history of transnational institution building, yet without letting it disappear into the political history of European integration.

In so doing, the Special Issue takes the existing research a major step further by granting prominence to the link between migration and social rights and presenting refreshing insights into the genealogy of migration regimes beyond debates on ethnic and cultural belonging. Moreover, it shifts attention to the contested negotiation of these rights between a multitude of formal, informal, private, and institutional actors. Finally, by subordinating migration to questions of social and legal inequality, it decentralizes migration as heuristic category and thus provides excellent empirical case studies of how to put into practice what Manuela Bojadžijev and Regina Römhild emphatically urged us to do about ten years ago: "to demigrantisize migration research and to migrantisize the social sciences" (Bojadžijev and Römhild 2014, 11, own translation; Dahinden 2016).

In the following, I will highlight three subject areas to which the articles make distinct contributions: the winding routes of colonial continuities in categorizing European labor mobility, the role of the mobile workers, and the transnational governance of labor migration.

3. The Colonial Past of Categorizing European Labor Mobility

Recently, historian Megan Brown (2022) published a remarkable book on the early history of the European Economic Community (EEC) between 1957 and the late 1970s. The book reads this history against the grain. Brown elaborates on the little-known fact that Algeria was a founding member of the EEC until it left the Treaty of Rome, its founding document, in mutual agreement in

1976. Although this move appears to be counterintuitive at first sight, it followed a clear imperial logic: Algerian membership was sought to stabilize French rule in Algeria in a situation in which decolonization struggles were continuously growing in size and strength. Inscribing Algeria into the Treaty of Rome was meant to constitute a powerful act that should legitimize Algeria's imperial status quo. This had concrete consequences for the mobile workers who travelled between Algeria and Europe: They were granted the right to move freely between the EEC countries for the purpose of employment and, from 1958 onwards, they were also granted social security rights. This constellation, which was fully in line with the transnationalization of the EEC member states, preoccupied the European Court of Justice beginning in 1962, when Algeria gained independence. EEC members north of Africa assumed that labor migration across the Mediterranean meant abandoning EEC provisions – including claims for social security provisions (Brown 2022, 237-43).

We are particularly interested in the fact that the history of Algeria's membership in the EEC has been "erased from memory" (Brown 2022, 16). This points to a major issue that several articles in this Special Issue address: The colonial past of European migration regimes, which becomes manifest in the central role that practices of categorization played and continue to play in separating and creating hierarchies between different mobile groups. In this vein, the articles inscribe the subject matter into increasing scholarly attempts to undo the very act of writing the colonial past out of the European history and present, five decades after formal decolonization (Pasture 2018; Hansen and Jonsson 2014; Kalter and Rempe 2011). Reading the case studies together, they contribute a distinct perspective to these debates. The essays sensitize readers to the far-reaching consequences of political and administrative practices of categorizing and differentiating mobile workers into a desirable, less desirable, and undesirable workforce on the grounds of ethnic origin, geopolitical considerations, and racialized presuppositions. They highlight the practices of categorizing and hierarchizing mobile workers and professionals and the power of these categories to "sort" mobile workers, to grant or deny access to social (security) rights, and to fragment or curtail these rights. They thus allow us to trace the transformation of practices of privileging or discrimination against certain labor mobilities in a long-term perspective, and to better understand how colonial nomenclatures were translated into administrative logics and the rights-based language of the late 20th and early 21st centuries.

Hugo Mulonnière and *Ferruccio Ricciardi* address this issue by interrogating how the relationship between "legal status, territorial mobility, and access to social benefits" for workers from North Africa evolved between the First World War and the early 1970s, when the former colonies became independent (Mulonnière and Ricciardi 2025, 28, in this issue). The authors showcase

the degree to which workers from Algeria, Tunisia, and Morocco were subject to racializing policies that treated them differently compared to workers who came to France in the framework of bilateral agreements with other European countries. Mulonnière and Ricciardi convincingly document the emergence of the political category of the "undesirable" workers. In addition to being dominated by means of a colonial migration management system, "undesirable" workers also encountered a great deal of suspicion from people who assumed that their aim was to draw unemployment benefits. This had tangible effects, as many of them were subsequently deprived of social security rights. Moreover, these workers experienced the "flexibility" of legal and administrative categories that consciously blurred the line between foreign, colonial, and domestic. As a result, in the period under investigation, the workers constantly moved in and out of the status as *protégés*, ordinary foreigners and/or French subjects, and thus in and out of the right to receive particular social benefits that remained fragmented and subordinated to economic, political, and racialized considerations. It was only with independence and the negotiation of bilateral agreements that all workers from North Africa were granted equal social rights and benefits – though still not on an equal basis compared to social benefits connected with the principle of free movement.

Two more articles take these findings into the present. They show that these practices did not vanish with formal independence; they continued to impact the chances of non-European workers and professionals alike. In both cases, political, legal, and administrative categorizations as non-European foreigners brought (or bring) about severe problems for the individuals concerned. These range from administrative roadblocks to restrictions and substantial financial burdens when it comes to applying for student, residence, or work permits. Taking students from Morocco in France in the last two decades or so as a case study, *Hicham Jamid* analyzes their attempts to change their status from student to employee in order to stay in France and to officially take up employment. He stresses the intersection of administrative and legislative hurdles that, since the late 1990s, have made it increasingly difficult for this group to apply for a student visa and then to subsequently gain a working permit. Much like Mulonnière and Ricciardi, he stresses the power of administrative categories to permanently redefine the status of these students (from "desired" immigrants to foreigners sharing the same status with other non-Schengen visa applicants) and, as a consequence, to either impede or thwart their professional careers. As he shows, categorizing them in such a way results in complicated and open-ended procedures that test the perseverance and financial opportunities of future employees and employers alike. Like Mulonnière and Ricciardi, Jamid also points to the role of suspicion as a default and a means to strictly monitor the process of changing status. As Jamid notes, reservations against non-European students in France sharpen the

delineation between "desired" and "less-desired" student groups, despite the fact that these students have graduated in France and belong to a social and status group that French immigration policies welcome in principle. However, except for the conclusion, Jamal does not expand explicitly on the connection between colonial racism and the present-day regulation of professional mobility, though it resonates with his analysis throughout the entire text. It would be worthwhile to explore this issue in greater depth.

Adrien Thibault analyzes the emergence of "talent" as a migratory category and the concomitant migration restrictions for the highly skilled segment of mobile workers in France between 2006 and 2023. His chapter is in close dialogue with Jamal's: They both scrutinize how the French legislative and executive introduced subtle yet effective hierarchies between desired and less-desired highly skilled professionals who applied for work and residence permits. Thibault provides a sophisticated analysis of the drafting, amendment, and sharpening of these categories over the course of some years. In so doing, he tells the story of how administrations invent exhausting procedures that tediously test candidates who do not fit the criteria at first sight. The subtle mechanisms of hierarchization and discrimination at work are particularly interesting. The "talent" category evolved as a tool to strengthen and promote existing socio-economic hierarchies in French society. Within this context, Thibault interprets the shift from level of qualification to level of income as the main criterion for receiving the "talent passport" (Thibault 2025, 159; in this issue), a shift that bluntly privileged strong economic migrants over the cultural elites. However, his analysis also concedes that race relations play a hidden, yet powerful role in the tailoring of this category. Favoring income as a pivotal criterion for access to the French labor market means excluding professionals from the former French colonies in North and West Africa – a fact that the parliamentary debates and interviews with visa officers clearly underscore. Thus, Thibault provides compelling arguments that factor in the colonial past of present-day labor mobility regimes. At the same time, however, his investigation cautions the reader against rashly drawing a teleological line between then and now. His suggestion to closely consider the socio-political profile of the involved actors, as well as their visions for reshaping capitalist class logics, reminds us of the multiple sources of discrimination and racially motivated exclusion of mobile workers in the present.

4. Bringing in the Mobile Workforce: Migrants' Perspectives and Agencies

Current studies in migration research emphasize the need to bring to the fore the agency of migrants in the conceptualization of migration regimes. This approach owes much to Border Studies and the autonomy of migration approach (e.g., Rygiel 2011; Hess and Tsianos 2010). These methods challenge prevailing ideas of state power and control in favor of a much more nuanced understanding of how different groups, vested with different access to power, contribute to the structuring of highly selective and restrictive European migration regimes. While Border Studies and studies working with the autonomy of migration approach scrutinize our understanding of the gradual fortification of European border regimes, they also call into question perceptions of the sovereign nation state that would deliberately exercise power over its territory. By putting national border policies into relation with the physical movement of migrants, these approaches focus on the struggle of mobility. Rather than perceiving the migrants as "the 'absent cause' of governance" (Tsianos and Karakayali 2010, 376), this strand of research highlights the porous and reactive nature of European and state-led migration policies. Based largely on ethnographic fieldwork, they aim at "revealing migrants' agency and subjectivity" (Hess 2012, 430) in order to counterbalance binary narratives of strong states and migration victimhood. As a result, they suggest a close reading of the mode of actions and the effects of the migrants' behavior and action on state apparatuses. They thus undermine assumptions that agency and decisive action are the exclusive prerogative of the state (Tazzioli 2020; Stierl 2019; Schwenken 2006).

Sanja Beronja and *Nikola Tietze* can be situated within this research context, although both would probably not connect their writings with these concepts. Nonetheless, their articles shift perspective in important respects as they focus their attention on migrants and provide a thorough analysis of how labor migrants can leave visible marks on the regulation and mundane unfolding of European labor mobility. In his article, *Hicham Jamid* already gave voice to those Moroccan students who apply or wait for their status change. He illuminated the impact of administrative obstacles on students' career paths, the frustrations resulting therefrom, and their gradual abandonment of the idea of staying in France over the long run. *Sonja Beronja* expands upon this yet adds a substantially different layer in her presentation of labor mobility of Serbian tech professionals to Berlin since roughly 2020. She approaches this complexity from the angle of voluntariness and elaborates on the concept of "lifestyle mobility," appending the subjective – but in this case powerful – category of "a 'better way of life'" as a driving force for the experience and course of individual movements (Beronja 2025, 96; in this issue). Drawing on a range

of interviews, Beronja highlights the transnational scope of action that these professionals experience in constellations that frame tech mobility between the EU Blue card, local schemes (including local administrations, company work environments and neighborhoods) and transnational professional communities. Focusing on mobile tech professionals, Beronja directs attention to how the self-narratives of these labor migrants navigate legal and administrative categories. They oscillate between the perception of being privileged and largely autonomous in their decision-making on the one hand and the bodily experience of being kept in limbo due to administrative procedures on the other. Delving deeper into the potentials and limits of their migrant agency, the article makes two major arguments: First, it directs attention towards the increasing role of non-state actors, such as tech companies, in the development of European labor mobilities. Additionally, Beronja shows how the transnational competition for highly skilled experts can act to empower such experts vis-à-vis local administrations and companies. Secondly, the article demonstrates that the labor mobility of sought-after high-skilled professionals remains inevitably connected to hierarchies and discriminations – be it a Southeastern European country of origin that ranks lower compared to other regions, ethnically coded and class-centered career ladders, or the relative detachment from local life. Beronja's achievement lies in her tracing of these differences and how she provides a deeper understanding of the constant modifications and diversifications of labor mobilities, all while granting a central position to moving individuals.

Nikola Tietze's article offers an excellent match to Beronja's findings. Tietze introduces us to the complex technical and legal regulations of the law of EU citizenship. Moreover, she presents one of the most powerful tools that EU citizens have to gain a hearing – lawsuits before the European Court of Justice (ECJ) in Luxembourg. Expanding upon three landmark cases on the scope of social citizenship of mobile low-wage workers, Tietze comments critically on the law and how its interpretation by ECJ judges develop over time. Content-wise, the author traces a major shift in the interpretation and policies of EU citizenship that took place between 1998 and 2015 – from a de-territorialized conception in which the social rights follow the moving laborers, to a territorial interpretation that shines a spotlight on the economic and financial interests of the member states. This developed in line with fundamental policy shifts, in particular the breakthrough of a liberal rationale that subjugated the principle of non-discrimination to a national economy's power to compete. Tietze thus illuminates the relative and context-dependent nature of Union citizenship and social (security) rights in particular. Moreover, she manages to shed light on the driving forces and governance ideas that drove these transformations in the background. Much like *Emmanuel Comte*, Tietze also ascribes a leading role to the various German governments and their quest to retain full control over labor mobility. Yet, she understands this policy shift

less as future-orientated and more as a relapse into a highly racialized and ethnicized perception of "foreigners" and migrant workers that resuscitated the socio-cultural spirit that underpinned the bilateral labor agreements from the 1950s onwards.

As soon as we put Tietze's findings into conversation with Sonja Beronja's, the contingency of migrant agency comes to the fore. We catch sight of the possibilities of mobile individuals to take the initiative and to give substantial impetus to existing governance schemes. Together, these two contributions render the conditionality of these actions intelligible and excavate the fine web of hierarchies, discriminations, and subtle racializations (and colonial continuities) that inform the European and national governance of labor mobility. The migrants have the power to push these webs point by point. Yet, both authors impressively demonstrate the degree to which the more or less blunt segregation of the mobile workforce continues to persist nonetheless due to constant modifications and stratifications of European labor mobility, comprising room for the individual to contribute and co-shape the production of labor mobility.

5. The Multi-Fractured Governance of European Labor Mobility

The final set of articles deals with the transnational governance of European labor mobility. They tie in with a rich body of literature on the history and practices of European integration, transnational institution building, and international governance as it has evolved since the late 19th century (e.g., Patel 2020; Katz Cogan, Hurd, and Johnston 2016; Kaiser and Schot 2014; Rass 2010; Herren 2009). These contributions approach the history of European regulation from the angle of its "mobility architecture." This enables the authors to separate the study of the production of labor migration in Europe from institutional histories of European integration. As *Sebastian Büttner, Karim Fertikh*, and *Nikola Tietze* point out compellingly in their introduction to this Special Issue, this allows a probe into governmental and administrative practices related with labor mobility from a point of view that pays particular attention to the "'borderline situations' of migrant workers" (Büttner, Fertikh, and Tietze 2025, 16; in this issue). This does not just mean conceding room to less common perspectives and voices, as outlined in the foregoing section; it also allows for the exploration of different, overlapping logics of governance (business, local, national, European, international) and the continuing influence of different time layers that stem back to the late 19th and early 20th century and continue to permeate present-day perceptions and practices in dealing and reproducing labor mobility (e.g., colonial legacies). These

articles therefore remind us of the long history of the principle of free movement, which reaches far beyond the Schengen agreement. Furthermore, they substantially open up our understanding of the inconsistencies and multiple fractures in the production and governance of labor mobility and allow us to better grasp how these different, at times conflicting logics inform the physical movements of workers in and to Europe.

Karim Fertikh and *Emmanuel Comte* bring to the fore the multi-layered processes in the course of which the principle of freedom of movement emerged and was further developed. The authors consider the different logics, rationales, and perspectives that drove the creation of an institutional European space of free movement and the transnational implementation (and contestation) of social rights that occurred simultaneously. *Karim Fertikh* concentrates on the experts that stood behind the EEC-wide scheme to grant social rights to migrant workers. For him, the freedom of movement of workers in connection with social security constituted "a legal 'revolution'" (Fertikh 2025, 55; in this issue) as it meant to de-territorialize (or personalize) social security law. Sovereign lawmaking was not only a sensitive (and in the Cold War frame, contested) issue in the 1950s, but also a concept at the heart of the modern nation state, and in this context Fertikh examines how this "revolution" came about. Fertikh finds answers by turning attention to the responsible body, the Administrative Commission for the Social Security of Migrant Workers. He draws on notions of epistemic communities that follow their own, professional logic and require a high degree of technical knowledge in order to address complicated subject matter. Fertikh cogently argues that we must consider the different time layers that were at stake. He points out the degree to which these experts (all government officials) had been influenced by interwar internationalism, in particular the achievements of the International Labor Organization (ILO), in their attempts to de-commodify labor. It is here that the article renders intelligible the peculiar, "enclosed," yet extremely powerful and far-reaching nature of these expert deliberations. This enables Fertikh to demonstrate that the initial production of European labor mobility was a highly sectoral endeavor that followed different logics and temporalities on different scales and thus – one is tempted here to write "naturally" – triggered a broad range of tensions and contradictions. Sensitizing us to how different layers of historical time find expression in the aims and logics of the actors, Fertikh also brilliantly exemplifies why the sociohistorical approach can substantially enlarge our conception of how European labor mobility has been produced.

Emmanuel Comte continues this line of thought when exploring how and why West Germany proved to be a driving force in the institutionalization of the freedom of movement. He invites us to critically approach European founding narratives and their impetus to provide the reader with idealistic versions of how elites envisaged the future of the European people. Instead,

Comte emphasizes the concrete political and economic motives that drove the West German government: supporting transnational business activities including the mobility of lawyers and other professionals; recruiting a transnational workforce for the reviving German economy; opening up an exit option in case of high unemployment (enabling workers to leave easily); relaxing visa restrictions against German nationals; and fortifying Western alliances. Against this background, conflicts – for instance, with regard to calls for protective state policies towards low-skilled workers, or the unexpected role of companies that tend to extract unilateral profits and thereby cause grievances – become much more tangible and historically traceable.

The contestations regarding low-skilled workers are also at the heart of *Pierre-Edouard Weill and Pierre-Guillaume Prigent*'s essay on the coverage of posted workers in the French press and *Stefanie Börner*'s contribution that leads us into the era of COVID and thus to the very recent present. Departing from scandals in the German agro-food branch that became public soon after the first lockdown, Börner provides a compelling example for the constitutive role of categorizations in the shaping of European labor mobility. By analyzing the developments of labor law regarding posted work, subcontracting, and migrant seasonal work, Börner examines the constant flux of these categories and how this creates loopholes in European regulations; this also includes the inertia to reform European and national labor law, and the importance of non-state actors (e.g., well-established trade unions). Börner stresses the "unfinished" character of European governance schemes that constantly adapt to the practices of transnational companies and low-skilled workers. Additionally, Börner underscores the multilevel character of European labor mobility, which requires a broad range of stakeholders to take political action at different levels. Pierre-Edouard Weill and Pierre-Guillaume Prigent's arguments align with these findings. They assert that posted work affects the European member countries on several levels; however, the social problems that this leads to appear to be most pressing and present in local press coverage. As a result, the most vulnerable groups – low-skilled migrant workers – suffer most as they are abused and stigmatized all at the same time. While these authors turn our attention to the national and local levels, Börner brings in a new perspective when she describes the weaknesses of the multilevel governance of European regimes in terms of "institutionalized irresponsibilities" (Börner 2025, 236; in this issue). She thus shifts the discussion in important respects and reminds the reader to consider the norms and values that guide the production and regulation of transnational labor mobilities (Löhr et al. 2025).

6. What Next?

Taken together, the nine essays and the introduction allow the reader to delve into the complexities of European labor mobility. The sociohistorical approach proves to be especially rewarding because it sensitizes us to the different scales that play into "producing" European-wide labor mobility schemes. As a historian, I have a focus on the impact of time and how preceding constellations continue to influence ideas, conceptions, regulations, practices, and the physical movements of people across great caesuras. In this regard, the Special Issue takes existing research a major step further. The contributions here present empirically rich and conceptually mature case studies that showcase the simultaneity of patterns in the colonial, national, and transnational governance of European labor mobility. What may appear random at first sight – the combination of different sites, actors, constellations, and topics – reifies in discursive form our analytical comprehension of the fractured and non-linear routes that produce transnational labor mobility schemes. As we have argued elsewhere (Reinecke and Löhr 2024), assessing particular constellations through the mindsets, ideas, or practices of the groups involved allows us to denaturalize categories, to distance ourselves from our own assumptions, and to assure that we, as scholars, are not hoodwinked by sociopolitical narratives. This is one of the major achievements of this Special Issue: The authors suggest that we take complexity, contingency, and fractures not as something that would hinder our findings, but as necessary components in our analytical toolbox. Instead of reading empirical evidence only with the intention of making sense out of present problems, the essays make powerful arguments for investigating the interplay between long- and short-term developments on different scales, grasping the transformation of categories, and seizing on the complex interplay between different kinds of agency (and how they transform over time). Thus, as Eileen Boris, Heidi Gottfried, Julie Greene, and Joo-Cheong Tham (2023) have suggested, focusing on cross-cutting mobilities allows us to transcend state-centered perspectives and thus to better understand the "messiness" of past and present migration regimes.

Moreover, the articles substantially add to reflexive perspectives in migration research. The critical interrogation of categories, practices, and layers of agency brings the role of knowledge to the fore. This Special Issue invites us to consider the sociohistorical approach more systematically when it comes to understanding how historical and contemporary actors categorize(d) physical movements, organize(d) their knowledge, and how they derive(d) conclusions and measures therefrom. In this vein, the articles present strong arguments for going beyond national perspectives that have been criticized eminently in the last decades for their methodological nationalism. Although

the case studies are mostly situated in national contexts, the attention to the interplay of European, colonial, national, and local governance schemes subverts national perspectives. It also highlights the role of regional and local levels and invites researchers to delve into more detail about the local manifestations of transnational governance schemes of labor mobility and to understand how their entanglements in time and space affect situations on the ground.

With regard to future research, it would be promising to pursue such links further. Likewise, it would be immensely valuable to complement the study between different forms and regulations of labor mobility with an analysis of the grey zones between labor mobility and other mobilities. As soon as we illuminate the grey zones for instance between labor mobility, flight, and tourism, we deepen our understanding of how the categorization of different mobilities constitutes a principal act in the constitution of modern societies, the effects of which ripple across all segments of society. This Special Issue will undoubtedly provide an important impetus for such efforts.

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Beyond EU Exceptionalism: Digging into Europe's Mobility Archive

Antoine Vauchez *

Abstract: *»Jenseits des EU-Exzeptionalismus: Ein Blick in das Mobilitätsarchiv Europas«.* This postface examines the crisis of free movement of people in the European Union by challenging the long-held view of "EU exceptionalism" in this field. While free movement has long been presented as a fundamental and distinctive pillar of the European project, the last decade has witnessed a multiplication of border controls and mobility restrictions. In light of the papers brought together by the Symposium, it appears clearly that the current crisis cannot be reduced to a mere "backlash." By exploring the rich European Archive (in the Foucault sense) of mobility regimes, it reveals that the EU's free movement regime was never entirely novel, perfectly coherent, or unconditional. Rather, it is part of a long tradition of differentiated mobility management, marked by colonial continuities, national exceptions, and social hierarchies. The paper concludes by praising the added value of the volume which enables a rethinking of European mobility governmentality beyond teleological integration narratives. It highlights the multiple technologies of government, actors, and practices that contribute to producing, framing, and hierarchizing mobilities within the European space.

Keywords: European Union, free movement, borders, mobility, exceptionalism, governmentality.

1. The Crisis of EU Narration

While the free movement of people has for a long time epitomized the European project, it certainly appears today as the most fragile pilar of the EU "four freedoms" of circulation. Over the past decade, from the migration crisis to the Brexit and the continuous recourse by Member States to Schengen "exceptions" through "temporary reintroductions of border control," intra-EU frontiers have indeed made a come-back from being taken-for-granted and almost beyond-discussion to becoming the most divisive issue within and across Member States. As this new state of affairs is most often presented as a "backlash" or a "turnaround," scholars still fail to fit these trends in a

* Antoine Vauchez, Centre européen de sociologie et de science politique (CESSP), 14 rue Cujas, 75005 Paris, France; antoine.vauchez@univ-paris1.fr.

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general picture whereby free circulation's rights and border controls, mobility and immobility now seem to coexist on a permanent basis. More often than not, discussions range from the re-affirmation of the legal principle of free movement to critical assessments of "fortress Europe" now also turned into a "borderland" with an unprecedented complex set of "security institutions and *dispositifs* extending all over the territory to regulate movements of population" (Balibar 2018, 194). To put it like Adrian Favell, "Europe's borders had multiplied and reduced, thinned out and doubled in particular in the Southern and Eastern border." Truly enough, EU studies have for a long time worked with the assumption that free movement was slowly but surely unfolding, undermining the relevance of State borders in an ever-growing process of integration-through-mobility. While there were echoes of political oppositions, local resistances and even legal opt-outs coming from different points of the EU territory, they did not cause much of a stir: the general view was that exemptions and exceptions were essentially transitory resistances of the *raison d'Etat* or remains of colonial links bound to disappear as the incremental dynamics of transnational circulation unfolded. And yet, after a long decade of crises, there is an increasing sense that this narrative has proved somehow deceptive and increasingly incapable of accounting for the multiplication of legal and territorial borders within the EU. Two series of facts have casted doubt on this transnational reality. First, the progressive "discovery" that in the bureaucratic silence of ministries, local tribunals, and police departments, the circulation of EU citizens as well as residents was gender-wise, but also socially, nationally if not racially, differentiated and selective. Second, the fact that the integrative force of transnational mobility did not have the gravitational pull it claimed to have and that, what looked like residual points of resistance (e.g., the Dover-Calais crossing), had turned into a polarized field of contention, eventually leading to the exit of the UK and structural non-implementation of EU law as the field of asylum and immigration in countries like Hungary or Poland (Vauchez 2020).

This postface starts from the premise pointed out by the introduction (Büttner, Fertikh, and Tietze 2025, in this issue) that an essential part of this collective difficulty to make sense of these transformations lies in a claim for "EU exceptionalism" that has diffused deep into the narrative of European integration, somehow obscuring our understanding. Strangely enough, while the principle of free movement of people has been canonized as a central engine of European integration, the field of research has remained rather limited in political science. Handbooks rarely devoted specific chapters to the issue, the free movement of people being most often aggregated with the economic issues of single market on the one hand or with the political issues of "European citizenship" on the other. The long-held belief was that the free movement of people was somehow self-evident, axiomatic, beyond discussion, and above debate. As exemplified in this special issue, the current

multifacetous crisis may be an opportunity to free the analysis of Europe's regime of mobility from the integration teleology and incrementalism and describe its *actually existing* complexity and hybridity. While a certain legalism and idealism has long pervaded the study of mobility in the EU, the articles of this Special Issue take a critical move by entering into its bureaucratic and legal machinery of mobility and of immobility as well as by re-positioning this EU "success-story" in the rich European archive of mobility regimes. As it questions some of the deep-rooted mythologies about EU exceptionalism when it comes to free movement of people (in terms of uniqueness and of coherence), this Special Issue is able to reposition the current crisis in a European Archive of experiments, thereby providing a renewed understanding of its dynamics.

2. Europe's Most Emblematic Freedom?

It is hard to overstate the importance of the "fourth freedom" in the field of European integration. In a continent which has historically been the site *par excellence* of *forced* migrations decided in inter-state agreements and of national control of residence through work permits etc., the establishment of cross-national mobility is all but anecdotical. It is no surprise that it soon became the most emblematic freedom of a European project which itself evolved from the mere removal of customs' barriers to the promotion of post-national forms of citizenship freed from the State. To be sure, the establishment at the EU level of such free movement ran counter to two centuries of State-building processes which had "caged" individuals within national borders while foreigners were put under strict legal and administrative surveillance. In a context in which societies had been contained within confined territorial boundaries and transnational (religious, political, etc.) connections were put under strict State control (Bartolini 2005; Mann 1984), the EU appears as a radically new experiment. As a matter of fact, in a general panorama of regional economic agreements mostly centered on tarifs' and customs' unions (see, for example, NAFTA), it stands out for having included at its core a *fourth* component beyond goods, services, and capital, i.e., freedom of circulation of individuals.

Over the years however, the EU regime of free mobility has gone through a process of canonization which has turned it progressively into a showcase of EU distinct achievements and a "model for export." In which other continent of the world are individuals free to study, work, and retire with no quotas or restrictive policies? Even today, while the "success-story" is contested, it is hard to miss the rich arsenal of EU mobility propaganda and its many claims for prosperity, "human capital," or cosmopolitanism. Any study of EU mobility will therefore need to deal first with this European canon and engage in

studying the formation of the four freedoms' block. While the articles of the Special Issue show that the "fourth freedom" has a trajectory of its own before and beyond the European project, it has been progressively been bundled with the other three freedoms (goods, services, capital), turning them into one constitutional *acquis* to which the new Member States had to comply with (Vauchez 2015). It took the entrepreneurial role of the CJEU and of the Commission to tie them together into one building-block elevated to the statute of "fundamental dispositions of the Community legal order." Not without substantial consequences since the legal regime of free movement has been largely imported from the field of free movement of goods and services, the violation of European citizenship rights being assessed in terms of *entraves* (Azoulai 2011). While the solidity of the four freedoms' pack has been put under strenuous pressure over the past decade, the Brexit negotiations have recalled its deep roots within national governments and bureaucracies. Not only have the 27 Member States and the Commission marked their joint commitment to the "four freedoms" as a non-negotiable "compact" – thereby countering UK's initial claims to disconnect the freedom of circulation of people from the three other ones – but also the many practical difficulties of Brexit for both British citizens living in the EU and EU citizens in the UK point at the legal and bureaucratic rootedness of free movement which cannot undo 43 years of being a Member State by the mere virtue of a vote or even an EU withdrawal Bill, as can be seen from the complex and turbulent years of Brexit negotiations which led to the new trade agreement. This rootedness may be coined as the "Mowgli syndrome" from *The Jungle Book*: "it's easier for Mowgli to get out of the heart of the jungle, than for the jungle to get out of the heart of Mowgli."

What also makes the free movement of people so central lies in the critical role it has played in the claims made by EU institutions that the single market had turned into a political union of citizens. Suffice it to consider how EU treaties even since Maastricht as well as the 2000 Charter for fundamental rights have heralded its importance in sharp and unconditional terms. While article 3 of the Treaty of European Union sets out that "the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured in conjunction with appropriate measures with respect to external border controls, asylums, immigration and the prevention and combating of crime," article 45 of the Charter of Fundamental Rights adopted in 2000 says that "every citizen of the Union has the right to move and reside freely within the territory of the Member States."

Beyond this canonization as a core element of EU's legal architecture and self-definition, the freedom of circulation has also been promoted as one essential engine of a "Europeanization from below" or a "societization of Europe" through the transnational circulation of workers, students, residents, tourists, etc., whose cross-border mobility rights are therefore integral to the

survival of the European Union. Epitomized by the Erasmus student exchange program launched in 1987, or the European cosmopolitans taken into "spiral dynamics" analyzed by Adrian Favell (2008).

3. Repoliticizing Mobility

It is no surprise in this context that the crisis of cross-border mobility has come as a shock. An anti-free movement tide has indeed risen ever since the mid-2000s with calls for Member States' exemptions or opt-outs. Among these, France's crisis in hosting Roma in 2010 sparked by Nicolas Sarkozy, the 2016 Hungarian referendum on the EU plan for the re-localization of refugees, the 2020 COVID period with multiple "temporary" reintroductions of border controls, etc. Centrifugal pressures and internal tensions now abound and challenge specifically the "fourth freedom." Parties have emerged or repositioned around the issue of immigration (whether intra-EU and from outside the EU) from the United Kingdom Independence Party (UKIP) to *Alternative für Deutschland* or the *Fratelli d'Italia*. This re-politicization of labor mobility and intra-European migrants in the European Union has taken on a variety of forms, from nationalistic and xenophobic campaigns to social cohesion arguments pointing out the weakening of national welfare systems through so called social dumping as could be seen in the media coverage of debate over "posted workers" that unfolded from the late 1990s (see Pierre-Edouard Weill and Pierre-Guillaume Prigent 2025, in this issue).

However, the years 2015–2016 certainly appear as *the* critical juncture with the unprecedented flow of migrants attempting to cross the Mediterranean to flee violence and persecution as well as the simultaneous unfolding of the Brexit referendum campaign. As the migrants passed Greece and ignored the "Dublin rule," walking north, the refugee crisis turned into an issue of intra-EU freedom of circulation. While some governments built walls (Hungary) and refused to apply the "relocation scheme" adopted by the Council of the EU, others made use of the "sovereignty clause" in the Schengen system to assume responsibility for processing Syrian asylum applications for which they were not otherwise responsible. In only a few weeks, the issue evolved into a deep inter-governmental crisis (and a sharp East-West divide) that has never really stopped ever since. In parallel, the Brexit referendum campaign has illustrated the increasing national political salience of free movement of people which moved over the past two decades from a second-order to first-rank political issue. The "new settlement for the UK in the EU" negotiated early in 2015 by David Cameron had already focused almost exclusively on the issue of limiting the "flows of workers" by setting stricter conditions for access to UK welfare benefits (February 2016). Yet, the saliency of the issue became even stronger during the referendum campaign with the "threat" of

incoming Polish and Romanian workers taking central stage. While the "Leave" side framed its campaign in terms of sovereignty ("taking back control"), it concentrated its attacks on the freedom of movement of individuals and access to social rights and employment, exemplified by UKIP's infamous "breaking point" poster. And the Brexit vote did not resolve the issue, but instead the negotiations with the EU brought the issue center stage pointing at the many practical and bureaucratic difficulties encountered by EU citizens living in the UK as well as by UK citizens established in the EU.

4. Back into the Europe's Archive

More often than not, this ongoing phase of crisis of EU regime of circulation is understood in terms of "backlash" or even "fallout" of Europe's most praised principle. While this narrative certainly grasps some of the ongoing trends, it is based on an erroneous understanding of the past over-estimating its uniformity and its progressiveness. More than a complaint about a regretted past, the contemporary crisis is an invitation for scholars to move beyond the traditional narrative about the freedom of movement in the EU. To this aim, this Special Issue re-opens "Europe's Archive" (Roa Bastos and Vauchez 2019) and considers a number of cases drawn from various times in history. Thereby, it challenges the thick mythology surrounding free movement of people: its radical novelty in the European context, its functionalities in the European integration, and its unconditionality as a legal regime.

The articles of the Special Issue put EU's claim for radical novelty (its breaking with a past dominated by States surveillance and border control) in historical perspective. As they move back in time, the contributors are able to retrieve the rich archive of Europe's regimes of mobility with many intertwined colonial, intra-national, bilateral, and international layers. Different articles explore the web of continuities in which the European communities have been embedded as they engage in the mobility policies. The EU taken-for-granted regime of exportable social security rights, arguably one of the most invisible and yet critical deadlocks for the free circulation of workers, is hard to understand without connecting it to the broader network of social security bureaucrats which coalesced in the post-WWII period building a transnational consensus and setting a new space of possibilities. As pointed out by Karim Fertikh, the fast move to a coordinated Europe scheme for the social security of migrant workers as early as 1958 which applied to 600,000 migrant workers is a legacy.

Likewise, the "fourth freedom" has never been a "given," not to mention a DNA of the European project. Contrarily to what an ex-post point of view would have, historical accounts, such as the one presented in this Special Issue by Emmanuel Comte, point at the fact that the free movement of people

is only a late comer in the negotiations of the Rome treaty. The magic formula of the "four freedoms" and its extensive definition as the pedestal of the European Union were not present in the initial projects which focused mostly on the circulation of goods. In fact, the promotion of free movement of people came *despite* the reluctance of French diplomats who feared the consequences of exposing French workers to the competition. It took the insistence of German diplomats eager to mark the return of the country and of its entrepreneurs within the community of liberal societies to eventually write it down in the founding treaties. There is more, as the Special Issue sheds a light on the long *transformation* of the beneficiaries of mobility from "workers" to "citizens" as the free movement becomes a "fundamental right" and an essential brick of the political union. In fact, the Rome treaty negotiators mostly envisioned the freedom of circulation and of establishment of *workers* within the Common Market. It can even be said that the legal recognition of freedom of circulation of persons as a fundamental right was more thought initially with a view to protect legal persons (*personnes morales*) more than physical persons as corporate lawyers worried about the legal protection of investments across the Common Market. In other words, the contemporary understanding of EU "freedom of movement" was long in the making and emerged only as a result of a long series of pro-active moves on the part of the Commission and of the EU Court at the different critical junctures of the process of European integration. Just like the Court continuously expanded the scope of the "economic activities" involved in the free circulation of goods (cultural goods, sports, social protection, health care, etc.), it extended the scope of the treaty principle to independents, students, unemployed people, and their respective families, and also non-EU nationals, etc. By many regards, the promotion of EU citizenship in the Maastricht treaty as well as the adoption of the 29th April 2004 directive on the right of citizens to move and reside freely within the territory of the Member States marks the culmination of this process of deepening and enlarging the scope and the legal protection of free movement of people (Basilien Gainche 2019; Withol de Wenden 2019).

Last ditch of EU exceptionalism, the assumption that the over-estimation of the regime's coherence and unconditionality. The current crisis sheds light on the fact that States have always made sure to keep hold of this freedom securing many exemptions, exceptions, and delays. In matters of mobility, there is a long tradition of co-existence of principles and exceptions, of rules and differentiated implementation, sanctions and accommodations that never stopped. It is well known that certain Member States (Denmark, UK, etc.) have been able to secure opt-outs and exemptions in particular when it came to applying the Schengen rules. It is less known that the European Union has had to accommodate a special regime for the individuals from the former colonies, as Hugo Mulonnière and Ferruccio Ricciardi point out in their article in this Special Issue how legal differentiations in colonial regimes

of mobility (for example between the "French Muslims" and "*protégés*") were in part transposed into the present time. The articles point to class, ethnic, gender, post-colonial underpinnings of Europe's regime of mobility whereby low-skilled migrants are specifically targeted, while special policies are designed to attract the socially desirable "talents" through apparently racial-blind and class-blind policies promoting "student mobility" whose perimeter makes it difficult for the working class and, in this case, Moroccan students to be admitted (see Jamid 2025; Thibault 2025, both in this issue). What sticks out in hindsight is not so much the legal cathedral, but instead the level of flexibility of the EU model of mobility which exposes the changing rights and inequalities when it comes to been mobile or immobile.

5. The Fabric of Free and Un-free Mobility

As the Special Issue clears the ground from claims of "EU exceptionalism," it allows for thinking about the issue in new terms, which was very clearly indicated in the introduction (Büttner, Fertikh, and Tietze 2025, in this issue). While there is a long tradition of studies connecting mobility and transnationalism in sociology (Favell 2008; Fligstein 2008), there is less on the governmental as well as migrants' practices in framing and re-framing claims and identities. Far from being the result of a spontaneous and natural deployment, freedom of circulation has been for the whole 20th century a major area of State and EU policies with many legal, bureaucratic, and political ramifications. This Special Issue moves into its governmentality, exploring the set of governing technologies and of political/bureaucratic/legal authorities that have emerged alongside the European regime of cross-national mobility. Far from operating in a self-regulated mode through successive spillovers, mobility is the object of value of long series of judicial rulings, legal norms, bureaucratic practices, doctrinal formalizations, and a form of co-production with the *usagers* themselves as they mobilize, re-define, or avoid these norms. It is the originality of the project to highlight that "freedom" and "mobility" have been produced and governed across the continent, involving a huge set of bureaucratic, legal, and political efforts to open or remove borders, include or exclude migrants, open and hierarchize, universalize and condition mobility, etc.

To explore multi-scalar fabric of "free mobility," the articles consider a wide variety of actors, both state and non-state, involved in continuous negotiations. Among them, the Court of Justice of the EU and its ongoing legal disputes over social benefits of European citizen, in particular a new string of cases through which the Court seems to restrict the conditions of access to non-contributory social benefits to mobile European citizens, thereby moving "back" to a definition of social citizenship backed on worker status and on

the "wage society" as was the case in *Dano* (C-333/13). Nikola Tietze looks at the re-working of EU legal regime of mobility as exemplified in this Special Issue with the changes in the caselaw at Court of Justice even though the Europe's judicial branch had long been an active promoter of an extensive definition (see Tietze 2025, in this issue).

The articles also analyze the impressive richness of the State and of EU arsenal when it comes to organizing, incentivizing, or preventing "mobility" and "freedom" through rights, laissez-passer, residence permits, licenses for fishermen, labels of smart cities, visa applications, tax cuts, family allowances, raisings fees and economic borders for students, etc. This Special Issue opens a Pandora's box of how mobility is managed through legal status, territorial rights, and national entitlements. It displays the long list of regimes from the "forced" and "compulsory" mobilities of colonial workers or of unemployed people to the "chosen immigration" of golden passports studied by Sanja Beronja in this Special Issue. As it moves away from the simplistic narrative of incrementalism, as if a whole tide was moving up, the Special Issue brings a much deeper understanding of the social and political mechanisms that frame the scaling up of mobilities within European confines, with the complexities of a regime made of mobility and immobility, freedom and control, equality and hierarchization, rights and race, etc.

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Special Issue: The Making of European Labour Mobility: Histories, Manifestations, and Contestations (ed. Sebastian M. Büttner, Karim Fertikh & Nikola Tietze)

The special issue *Making of European Labour Mobility: Histories, Manifestations, and Contestations* offers a comprehensive exploration of the socio-historical development and current challenges surrounding labour mobility in Europe. Moving beyond the traditional focus on European integration and the EU, this special issue deliberately examines the principle of free movement as a longstanding, evolving concept rooted in broader historical and international contexts. By critically analyzing the social impact and governance of cross-border mobility, it highlights the multifaceted interplay of expertise, legal practices, social policies, and economic forces that have shaped labour mobility across Europe. The book traces the development of migration policies from the early 20th century to the present, addressing issues such as workers' rights, social security, and the rise of political and economic tensions that now challenge the free movement of labour. Against this backdrop, it also reflects on the future of European integration in an era of growing contestation and renationalization.

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